



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

मंगलवार, 10 अगस्त, 2021 / 19 श्रावण, 1943

हिमाचल प्रदेश सरकार

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Dated, the 15th June, 2021

No. Shram (A) 6-2/2020 (Awards) Dharamshala.—In exercise of the powers vested under section 17 (1) of the Industrial Disputes Act, 1947, the Governor, Himachal Pradesh is pleased to order the publication of awards of the following cases announced by the Presiding

Officer, Labour Court, Dharamshala on the website of the Department of Labour & Employment Government of Himachal Pradesh :—

Sl. No.	Ref. No.	Petitioner	Respondent	Date of Award/order
1.	71/20	Narinder Sharma	M/s Shree Balaji Hospital Kangra	03-03-2021
2.	53/20	Tenzin Dolma	E.E. HPPWD, Kaza	05-03-2021
3.	14/16	Sanjeev Kumar	S.O. Dhramshala	08-03-2021
4.	613/15	Raj Kumari	Secy. SMC, Army School, Yol Cantt.	17-03-2021
5.	25/15	Gian Chand	E.E. HPPWD, Jogindernagar	23-03-2021
6.	140/15	Vipin Kumar	B.M.O. Tiara	24-03-2021
7.	295/15	Tara Chand	E.E. IP & H, Mandi	26-03-2021
8.	65/13	Murari Lal	Director, M/s Suket Hospital	26-03-2021
9.	592/15	Bharat Kumar	D.F.O. Nachan	31-03-2021
10.	28/17	Dalip Singh	V.C. CSK HPKVV, Palampur	31-03-2021
11.	34/17	Vinod Kumar	-do-	31-03-2021
12.	31/17	Rohit	-do-	31-03-2021

By order,

RAM SUBHAG SINGH, IAS
Addl. Chief Secretary (Lab. & Emp.).

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 71/2020

Date of Institution : 09-09-2020

Date of Decision : 03-03-2021

Shri Narinder Sharma c/o Er. Uday Bhanu Dhiman, r/o Village Sibkaran, Tehsil & District Kangra, H.P. . . *Petitioner.*

Versus

The Employer/Proprietor, M/s Shree Balaji Hospital Kangra, Tehsil & District Kangra, H.P. . . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : None for the petitioner

For the Respondent : Sh. Jitender Sharma, Adv.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether termination of services of Shri Narinder Sharma c/o Er. Uday Bhanu Dhiman, r/o Village Sibkaran, Tehsil & District Kangra, H.P. *w.e.f.* 16-04-2020 (as alleged by workman) by the Employer/Proprietor, M/s Shree Balaji Hospital Kangra, Tehsil & District Kangra, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case was listed for appearance of the petitioner for today but, however, neither the petitioner nor his counsel had put in appearance before this Tribunal, despite the case being called several times since morning. Hence, despite due notice of the date of hearing, the workman/petitioner had remained *ex parte*.

3. It will be apt at this stage to take note of the relevant provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for brevity sake). Section 2 (b) of the Act defines the Award as under:—

“(b) “award” means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;”.

4. Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think it fit. The Central Government has framed rules called “The Industrial Disputes (Central) Rules, 1957.” Rule 10-B (9) reads thus:—

“10-B (9) In case any party defaults or fails to appear at any stage the Labour Court, Tribunal, or National Tribunal, as the case may be, may proceed with the reference ex-parte and decide the reference application in the absence of the defaulting party.”

5. Rule 22 reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex-parte.—If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

6. The State of Himachal Pradesh has also framed rules called “The Industrial Disputes Rules, 1974.” Rule 25 thereof reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex-parte.— If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

7. Rule 22 of the Industrial Disputes (Central) Rules, 1957 and Rule 25 of the Industrial Disputes Rules, 1974 authorize the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Tribunal to presume that all the parties are present before it although, infact, it is not true, and thus make an ex parte award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Tribunal, thus, has to imagine that the workman is present, he is unwilling to file the statement of claim, adduce evidence or argue his case.

8. In the instant case, neither the workman nor his counsel has put in appearance before this Tribunal today. In these circumstances, the Tribunal can proceed and pass ex parte award on its merits.

9. As per the reference, it was required of the petitioner to plead and prove on record that the termination of his services *w.e.f.* 16-04-2020 by the respondent was without complying with the provisions of the Act and, thus, illegal and unjustified. However, there is neither any pleading nor

any evidence to this effect on record on the part of the petitioner/workman. At the risk of repetition the petitioner/workman had not put in appearance before this Tribunal. In this view of the matter, the petitioner is not entitled to any back wages, seniority, past service benefits and compensation. Accordingly, this reference is answered in the negative. Parties to bear their own costs.

10. The reference is answered in the aforesaid terms.

11. A copy of this Award be sent to the appropriate Government for necessary action at its end and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 3rd day of March, 2021.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial,
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No.	: 53/2020
Date of Institution	: 08-9-2020
Date of Decision	: 05-03-2021

Smt. Tenzin Dolma w/o Shri Sher Singh, r/o VPO Hikkam, Tehsil Kaza, District Lahaul & Spiti, H.P.	. <i>Petitioner.</i>
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Versus

The Executive Engineer, HPPWD B&R Division Kaza, District Lahaul Spiti, H.P.	. <i>Respondent.</i>
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Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner	: Petitioner in person
For the Respondent	: Sh. Anil Sharma, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether termination of services of Smt. Tenzin Dolma w/o Shri Sher Singh, r/o VPO-Hikkam, Tehsil Kaza, Distt. Lahaul Spiti, H.P. by the Executive Engineer, HPPWD, B & R Division Kaza, Distt. Lahaul Spiti (H.P.) during June, 2019, without complying with the

provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer?"

2. The case is listed for appearance of the petitioner but, however, Smt. Tenzin Dolma (petitioner) has made the below given statement in the Court today:—

“ब्यान किया कि मैं यह case न चलाना चाहती हूँ और मैं अपना case (Ref. No.53/20) वापिस लेती हूँ/ दाखिल दफतर किया जावे।

RO&AC

PJ

Sd/-

Sd/-

Identified by

Sh. Vijay Kaundal, Adv.

Sd/-

3. In view of the above statement, this reference is dismissed as withdrawn. Parties to bear their own costs.

4. The reference is answered in the aforesaid terms.

5. A copy of this Award be sent to the appropriate Government for necessary action at its end and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 5th day of March, 2021.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial,
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 14/2016

Date of Institution : 04-1-2016

Date of Decision : 08-03-2021

Shri Sanjeev Kumar s/o Shri Jagdish Chand, r/o Village Daridh, P.O. Sanhoon, Tehsil Jaisinghpur, District Kangra, H.P. .Petitioner.

Versus

The Settlement Officer, Kangra Division at Dharamshala, District Kangra, H.P.

. Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR

For Respondent : Sh. Anil Sharma, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by the worker Shri Sanjeev Kumar s/o Shri Jagdish Chand, r/o Village Daridh, P.O. Sanhoon, Tehsil Jaisinghpur, District Kangra, H.P. before the Settlement Officer, Kangra Division at Dharamshala, District Kangra, H.P. *vide* demand notice dated 09-05-2012 regarding his alleged illegal termination of services *w.e.f.* 31-07-2003 suffers from delay and laches? If not, whether termination of the services of Shri Sanjeev Kumar s/o Shri Jagdish Chand, r/o Village Daridh, P.O. Sanhoon, Tehsil Jaisinghpur, District Kangra, H.P. by the Settlement Officer, Kangra Division at Dharamshala, District Kangra, H.P. *w.e.f.* 31-07-2003 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. The case of the petitioner as set out in the statement of claim is that he was initially engaged on daily waged basis as a chainman by the respondent/department vide office order dated 20-3-1997 and he joined as such on 16-4-1997. The initial engagement of the petitioner was only for 89 days but thereafter he continued in the department as a chainman upto 30-7-2003. However, the services of the petitioner were terminated by the respondent vide notice dated 21-7-2003 *w.e.f.* 31-7-2003. Along-with him the services of thirteen other co-workers had also been terminated. It has been alleged that the notice dated 21-7-2003 is arbitrary. No retrenchment compensation had been paid at the time of terminating the services of the petitioner. The notice terminating the services of the petitioner is malafide. The petitioner had completed 238 days in the year 1997, 365 days in 1998, 365 days in 1999, 364 days in 2000, 362 days in 2001, 365 days in 2002 and 207 days in 2003 respectively. Mahinder Singh and Durga Dass, juniors to the petitioner have been re-engaged in service. The principle of ‘first come last go’ has not been applied. No opportunity was afforded to the petitioner for re-engagement. The act of the respondent was highly unjustified, arbitrary, unconstitutional, contrary and against the mandatory provisions of the Act. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability and that the petition is bad on account of delay and laches. The contents of the petition were denied on merits. However, it is admitted that the petitioner was engaged on 20-3-1997 as a daily waged chainman and that he had joined his duty on 17-4-1997. It is asserted that the services of the petitioner were retrenched after serving him ten days notice *w.e.f.* 31-7-2003. The department had deployed chainmen as per Section 118 of H.P. Land Revenue Act, 1954 read with Appendix E of Land Record Manual, 1954 in a phased manner. On 3-4-2003, sixty four chainmen were deployed by the respondent/department. Thereafter sanction/approval of the

posts of 116 patwaris and 50 daily waged chainmen had been accorded on 26-8-2002. In view of this sanction, the department by following the principle of 'last come first go' had retrenched the services of chainmen figuring at serial nos. 51 to 64 of the seniority list on 31-7-2003 by serving them due notice. Mahinder Singh and Durga Dass were re-engaged by the department as per the orders of the Hon'ble High Court. No junior to the petitioner had been engaged. The petitioner is gainfully employed as an agriculturist. The respondent, thus, prays for the dismissal of the claim petition.

4. While filing the rejoinder the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court vide order dated 18-10-2016:

1. Whether the industrial dispute raised by petitioner vide demand notice dated 09-05-2012 qua his termination of service *w.e.f.* 31-07-2003 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? . . .*OPP.*
2. Whether termination of the services of petitioner by the respondent *w.e.f.* 31-07-2003 is/was illegal and unjustified as alleged? . . .*OPP.*
3. If issue no.2 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
4. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed.

7. Oral arguments of the learned Authorized Representative for the petitioner and the learned Deputy District Attorney for respondent heard and records gone through. Written arguments filed by both the parties have also been gone through by me.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1	: No
Issue No. 2	: Yes
Issue No. 3	: Re-engagement with seniority and continuity in service from 31-7-2003, except back wages.
Issue No. 4	: No
Relief.	: Petition is partly allowed as per the operative part of the Award.

REASONS FOR FINDINGS

Issue No. 1 :

9. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

10. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Hence, this issue is decided in favour of the petitioner and against the respondent.

Issues No.2 and 3 :

11. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

12. The petitioner, namely, Shri Sanjeev Kumar examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim. He also filed certain documents purportedly in support of his claim, which are exhibited as Ex. PW1/B to Ex. PW1/G.

In the cross-examination, he admitted that the department had given him a notice. He feigned ignorance that on completion of the settlement, the work of the chainman decreases in the department. He was not aware that for this reason the department by following the principle of ‘last come first go’ had terminated the services of some chainmen by issuing a notice. He admitted that the department had served upon him a notice dated 21-7-2003. He also admitted that the Mahinder Singh and Durga Dass had been re-engaged as per the orders of the Court. He owns land, which he cultivates.

13. The petitioner examined one Shri Kulvinder Singh, Senior Assistant with the Settlement Officer, Kangra at Dharamshala as PW2. He proved on record documents Ex.PW2/A to Ex.PW2/E. In the cross-examination, he admitted that seniority lists Ex.PW2/C to E were the combined seniority lists pertaining to Kangra and Shimla Divisions.

14. Conversely, Smt. Rakhil Kahlon, Managing Director, H.P. Backwards Classes Finance & Development Corporation, Kangra, who is holding the additional charge of Settlement Officer, Kangra Division at Dharamshala (respondent) testified as RW1. In her affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, she corroborated on oath the contents of the reply filed by the respondent.

In the cross-examination, she admitted that as per Ex.PW1/B, a document of their department, the petitioner was engaged for 89 days. She also admitted that besides this letter, no other appointment letter had been issued. She further admitted that *vide* Ex.PW1/C, the services of the petitioner had been retrenched. She clearly admitted that as per Ex.RW1/B, the petitioner before his retrenchment had worked for 240 days in the preceding twelve calendar months. Further, she

admitted that as per Ex.PW1/C, ten days notice had been given to the petitioner. She was also categorical that as per the record no retrenchment compensation had been paid to the petitioner. She also admitted that Durga Dass is junior to the petitioner. Volunteered that, he had been re-engaged as per the orders of the Court.

15. Ex. RW1/B is the copy of mandays chart pertaining to the petitioner.

16. Ex. RW1/C is the copy of list showing particulars of daily waged chainmen of Settlement Officer, Kangra Division as on 31-3-2003.

17. Ex.RW1/D is the copy of letter dated 26-2-2002 regarding continuation of 116 posts of casual patwaris and 50 posts of daily waged chainmen for the year 2002-2003.

18. Ex.RW1/E is the copy of retrenchment notice dated 21-7-2003 relating to the petitioner.

19. Ex.RW1/F is the copy of office order dated 28-6-2010 regarding re-engagement of Shri Mahinder Singh and Shri Durga Dass as per the orders of the Hon'ble High Court.

20. It is the admitted case of the parties that the petitioner was engaged vide office order dated 20-3-1997, copy of which is placed on record as Ex.PW1/B. He joined on 17-4-1997. This has not been denied by the respondent. The petitioner continued to work with the respondent after his initial engagement of 89 days as per Ex.PW1/B. His services were abruptly terminated vide order dated 21-7-2003, copy of which is Ex. PW1/C (also Ex.RW1/E). The petitioner was a workman, which has not been denied. In these circumstances, the engagement of the petitioner was to be regulated by the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). The defence of the respondent is that the services of the petitioner were disengaged because of the non-availability of work. However, the respondent has not placed on the file any document evidencing that the petitioner was employed subject to the availability of work and funds.

21. Now the question: Whether in terminating the services of the petitioner, the respondent is proved to have violated the provisions of Section 25-F of the Act. The answer, to my thinking, is in the affirmative in view of the material on record.

22. Claiming to have worked for 238 days in 1997, 365 days in 1998, 365 days in 1999, 364 days in 2000, 362 days in 2001, 365 days in 2002 and 207 days in 2003, as on 31-3-2003, the petitioner in his affidavit Ex.PW1/A claimed to have thus completed 240 days in each of the said calendar years. This claim having not been challenged during his cross- examination by the respondent deserves acceptance. More so, in view of the mandays chart Ex.RW1/B, the own document of the respondent. The said document is indicative of the petitioner having worked for 202 days in the year 1997, 355 days in the year 1998, 310 days in the year 1999, 353 days in the year 2001, 351 days in the year 2001, 358 days in the year 2002 and 205 days in the year 2003 upto 28-7-2003 in the department. Then, it stands clearly admitted by the respondent (RW1) that the petitioner had worked for 240 days in the preceding twelve calendar months prior to his disengagement, as per Ex.RW1/B. Section 25-F of the Act, which is alleged to have been violated by the respondent, says:

“25-F. Conditions precedent to retrenchment of workmen.—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until.—

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (e) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

23. In view of this provision, no workman employed in any industry, who has been in "continuous service" for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25-B of the Act, which in its material part reads:

"25B. Definition of continuous service.— For the purposes of this Chapter,—

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;
- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer.—
 - (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than.—
 - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
 - (ii) two hundred and forty days, in any other case...."

24. Since, the petitioner is proved to have completed more than 240 days during the period of twelve calendar months preceding the date of his retrenchment, his services could not have been terminated unless he was served with one month's notice and paid the retrenchment compensation as envisaged under Section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act were not complied with by the respondent. The notice terminating the services of the petitioner dated 21-7-2003 (Ex.PW1/B and also Ex.RW1/E) is not in conformity with Section 25-F of the Act. The respondent did not pay the retrenchment compensation to the petitioner, nor had issued any requisite notice to the petitioner.

25. In terminating the services of the petitioner, the respondent appears to have violated the provisions of Section 25-G of the Act as well. The said Section provides:

"25-G. Procedure for retrenchment.—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the

employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

26. The petitioner in paragraph 5 of his affidavit Ex.PW1/A, which was tendered by way of his examination-in-chief, maintained that Mahinder Singh and Durga Dass, who were junior to him, were re-engaged in the year 2010. His such deposition has not been challenged during his cross-examination by the respondent. Moreover, Smt. Rakhil Kahlon (RW1) admitted in her cross-examination that Durga Dass was junior to the petitioner. Ex.PW1/E is the seniority list of daily waged chainmen of Settlement Officer, Kangra Division. Ex.PW2/B and Ex. RW1/C are similar to it. The seniority list is an admitted document on the part of the respondent. It is admitted by Smt. Rakhil Kahlon (RW1) that seniority list Ex.PW1/E pertains to their office. From this document, it is clear that the services of Durga Dass and Mahinder Singh, whose names figure at serial No. 60 and 61, were engaged on 25-7-1997 respectively. Admittedly, their services were engaged after the engagement of the services of the petitioner, whose initial date of appointment as per Ex.PW1/E (also Ex.PW2/B and Ex.RW1/C) is 17-4-1997. It is not disputed by the respondent that Mahinder Singh and Durga Dass were re-engaged by the department in the month of June, 2010. It was claimed by the respondent (RW1) that they both were re-engaged as per Court orders. There is nothing on record to show that the above-named persons who were re-engaged as per Court orders were senior to the petitioner. This indicates that the persons junior to the petitioner are still serving the respondent/department. There is nothing on the file to establish that at the time of re-engaging the persons junior to the petitioner, an opportunity of re-employment was afforded to him (petitioner). Thus, the respondent has failed to adhere to the principle of ‘last come first go’. Retaining the juniors at the cost of the senior is nothing but unfair labour practice.

27. Such being the situation, the respondent can safely be held to have violated the provisions of Section 25-G of the Act as well.

28. Faced with the situation, it was contended for the respondent that the junior workers above-named had been re-engaged in service as per the orders of the Court. No doubt the petitioner (PW1) admitted that Mahinder Singh and Durga Dass had been re-engaged as per the orders of the Court but, however, to my mind that would not defeat his claim that they were junior to him.

29. However, the petitioner’s allegation that the respondent had violated the provisions of Sections 25-H of the Act as well, to my mind, does not appear to have been substantiated. The petitioner’s affidavit Ex.PW1/A as also his cross-examination as PW1 are non-existent in the names of the persons who were allegedly appointed by the respondent after his disengagement. The materials on record, thus, being too scanty and nebulous to lend assurance to his allegation that new/fresh workers were appointed after the termination of his services, the respondent cannot be said to have been proved to have violated the provisions of Section 25- H of the Act.

30. It is, thus, held that the disengagement of the petitioner was illegal and against the mandate of the provisions of Sections 25-F and 25-G of the Act. The termination of the petitioner is, thus, set aside and quashed. The respondent is directed to re-engage the petitioner forthwith on the same post. The petitioner shall be entitled to seniority and continuity in service from the date of his disengagement.

31. While testifying in the Court as PW1, the petitioner has given his age as 41 years. It is well known that a person like the petitioner will not sit at home during the period he is/was out of the service. The petitioner while under cross-examination clearly admitted that he owns land, which he cultivates. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed, so he is not entitled to the back wages.

32. Issue No. 2 is accordingly decided in favour of the petitioner, while issue No. 3 is also decided in favour of the petitioner, but partly.

Issue No. 4 :

33. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned Deputy District Attorney appearing for the respondent at the time of arguments. Otherwise also, from the pleadings and evidence on record, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is decided against the respondent.

Relief :

34. In the light of what has been discussed hereinabove, the present reference/claim petition succeeds in part and the same is allowed partly. The retrenchment of the petitioner is set aside and quashed. The respondent is hereby directed to re-engage the petitioner forthwith. He shall be entitled to seniority and continuity in service from the date of his illegal termination *i.e.* 31-7-2003, except back wages. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 8th day of March, 2021.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial,
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No.	: 613/2015
Date of Institution	: 19-12-2015
Date of Decision	: 17-03-2021

Smt. Raj Kumari w/o Shri Babu Ram, r/o Village Gupt Ganga, P.O. & Tehsil Kangra, H.P.
. .Petitioner.

Versus

The Chairman-cum-Secretary, School Management Committee, Army School Yol Cantt.
District Kangra, H.P. *. .Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR

For the Respondent(s) : Smt. Nitika Sharma, Adv.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Smt. Raj Kumari w/o Shri Babu Ram, r/o Village Gupt Ganga, P.O.& Tehsil Kangra, District Kangra, H.P. *w.e.f.* 01-09-2003 to 31-07-2013 and finally during August, 2013 by the Chairman-*cum*-Secretary, School management Committee, Army School Yol Cantt., District Kangra, H.P., without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner as it emerges from the statement of claim is that she was initially appointed as a peon by the Principal, Army School Yol Cantt on daily wage basis for 27 days *i.e.* from 1-9-2003 to 27-9-2003, vide letter No.36, dated 01-09-2003. Thereafter, her services were engaged by the respondent as Group ‘D’ staff *vide* order dated 1-10-2003 for a period of six months as an office peon on probation on a basic pay of Rs. 2,550/- along-with 50% D.A. per month, as provided to the Central Government Employees. She had continuously worked upto 26.3.2004 without any breaks. Her work and conduct during this period was to the satisfaction of the management of the school but, however her services were unlawfully terminated by the Principal, Army School, Yol Cantt. on 27-3-2004, as per letter dated 27-2-2004. Her services were again taken as a peon by the respondent *vide* letter No. 64, dated 2-4-2004 and she had worked upto 13-10-2004. Her services were again terminated by the respondent *vide* letter dated 4-9-2004 on false disciplinary ground. Neither any show cause notice was given, nor she was ever charge-sheeted for any misconduct. Even no inquiry had been conducted against her and her termination was in violation of the principle of natural justice. She was again appointed by the respondent in the month of October, 2004 and had worked upto 25-3-2005. Her services were then terminated by the respondent. She was again appointed by the respondent on temporary basis as a Group ‘D’ employee *w.e.f.* 1-4-2005 to 31-5-2005. Her service condition had been changed by the management by reducing her salary from Rs. 2550/- plus 50% D.A. to Rs. 1800/- per month, being violative of the provisions of Section 9-A of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). Thereafter, she was again appointed for a period from 6-7-2005 to 30-9-2005 as a Group D employee *vide* appointment order No.44/93 dated 1-7-2005. She was again appointed in the same capacity *w.e.f.* 1-10-2005 to 31-3-2006 *vide* appointment order No.108 dated 1-10-2005. She was then terminated on 31-3-2006 and again appointed on temporary/*ad hoc* basis as an Ayah in Group D post on a consolidated salary of Rs. 2550/- per month upto 12-5-2006. Her services were again terminated on 13-5-2006 and she was again appointed as Group D Ayah in administrative staff on contractual basis *w.e.f.* 1-6-2006 to 31-3-2007 @ Rs. 2550/- per month. She was disengaged *vide* advance notice dated 28-2-2007 and was again engaged as Group D Ayah in administrative staff (*ad hoc* basis) @ Rs. 3200/- per month *w.e.f.* 9-4-2007 to 31-3-2008. Her services were disengaged on 1-4-2008. She thereafter was engaged by the respondent on daily waged basis *w.e.f.* 8-4-2008 to 13-7-2008 @ Rs.130/- per day and on completion of the said period she was appointed as a Group D (safai karamchari) on a consolidated salary of Rs. 3250/- per month for a period *w.e.f.* 14-7-2008 to 13-6-2009. Her services were terminated *vide* advance notice dated 4-6-2009 *w.e.f.* 13-6-2009. She was again appointed in the same capacity, but on

a consolidated salary of Rs. 4690/- per month for a period of eleven months *w.e.f.* 22-6-2009 to 21-5-2010. Her services were terminated *vide* advance notice dated 17-4-2010 *w.e.f.* 21-5-2010. She was then appointed again for a period of eleven months in the same capacity and on the same consolidated salary *w.e.f.* 1-6-2010 to 30-4-2011. *Vide* advance notice dated 31-3-2011 her services were again terminated on 30-4-2011. She was then appointed again as a Group D (safai karamchhari) in the administrative staff on a consolidated salary of Rs. 4940/- per month for a period of eleven months *w.e.f.* 9-5-2011 to 8-3-2012. Again *vide* advance notice dated 9-2-2012 her services were terminated *w.e.f.* 8-3-2012. She was lastly engaged as Group D (safai karamchhari) in administrative staff on a consolidated salary of Rs. 5684/- per month for a period of eleven months *w.e.f.* 23-2-2013 to 22-1-2014. However, before the completion of the period, her services were illegally and unlawfully terminated by the respondent *vide* letter No.17 dated 30-7-2013. *w.e.f.* 31-7-2013. No show cause notice was given to her nor she had ever been charge-sheeted for any misconduct. No retrenchment compensation had been paid to her at the time of her unlawful termination on 31-7-2013, as provided under Section 25-F of the Act. While terminating her services, persons junior to her, namely, S/Smt. Vikrma Devi, Kamla Devi, Leela Devi, Pawna Devi, Anju Devi, Urmila Devi, Sangeeta Devi and Rekha Devi were retained, being violative of the provisions of Section 25-G of the Act. She was engaged and disengaged by the respondent time and again *w.e.f.* the year 2003 upto the year 2013 in different capacities *i.e.* peon, ayah and safai karamchhari, which amounts to unfair labour practice. Her final termination *w.e.f.* 31-7-2013 is highly unjustifiable, arbitrary, unconstitutional and against the mandatory provisions of the Act. Hence, the petition.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections that the case does not fall within the purview of Section 2-A of the Act, it being a private institution and that the Army Public School is a member of Army Welfare Educational Society, which is not a public body and that the contract of service between AWES and its employees does not come under the domain of Public Law. The contents of the petition were denied on merits. It was asserted that the services of the petitioner were engaged by the respondent *w.e.f.* 9-1-2003 to 27-9-2003 for a period of 27 days and that she was again appointed on 1-10-2003 on probation at a salary of Rs. 2,550/- per month along-with D.A. @ 50% of Central Government rates. The work of the petitioner was found to be not satisfactory and she had been given several warnings for not doing the duties sincerely. Her ACR was not good during the period from October, 2003 to February, 2004, but still was given a chance on contractual basis for a period of three years *w.e.f.* 5th April, 2004. Since there was not much improvement, the services of the petitioner were terminated on disciplinary grounds by giving her one month's advance notice on 13-9-2004. The petitioner was appointed on temporary basis *w.e.f.* 1-4-2005 to 31-5-2005 @ Rs.1800/- per month, since her services as a peon were not satisfactory. She had been appointed as an Ayah/Safai Karamchhari on temporary basis. The respondent had not violated the provisions of Section 9-A of the Act, because the petitioner did not fall within the purview of the Act. It is admitted that the petitioner had been appointed as a Group D employee *w.e.f.* 6-7-2005 to 30-9-2005 and 1-10-2005 to 31-3-2006. She was then appointed as a Group D employee on temporary basis @ Rs.2550/- per month *w.e.f.* 1-4-2006 to 12-5-2006 and on contractual basis *w.e.f.* 1-6-2006 to 31-3-2007. She was again appointed *w.e.f.* 9-4-2007 to 31-3-2008 as a Group D employee on *ad hoc* basis @ Rs. 3200/- per month. The appointments and terminations of the petitioner were as per AWES rules and instructions. Her services were finally terminated by the respondent *w.e.f.* 31st July, 2013 by giving her one month's salary in lieu of the notice. Since, the petitioner was appointed on contractual basis, as per Army Welfare Education Society Rules, the respondent could terminate the services of any contractual employee by giving one month's notice or on payment of one month's salary without assigning any reason. Smt. Vikrama Devi and Smt. Kamla Devi were senior to the petitioner and the remaining were juniors, who still are working as their work is found to be satisfactory. The respondent had not violated any norms. Hence, it was prayed that the petition be dismissed.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 18-10-2016:

1. Whether time to time termination of the services of petitioner *w.e.f.* 01-09-2003 to 31-07-2013 by the respondent is/was illegal and unjustified? . .*OPP.*
2. Whether final termination of services of the petitioner by the respondent during August, 2013 is/was illegal and unjustified as alleged? . .*OPP.*
3. If issue No.1 & issue No. 2 are proved in affirmative, to what relief petitioner is entitled to? . .*OPP.*
4. Whether the present claim petition/reference is not maintainable in the present form as alleged? . .*OPR.*

Relief.

6. Thereafter, evidence was led by the parties to the list in support of the issues so framed.

7. Arguments of the learned Authorized Representative for the petitioner and the learned counsel for the respondent heard and records gone through. Written arguments filed by both the parties have also been gone through by me.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 : Yes

Issue No. 2 : Yes

Issue No. 3 : Discussed.

Issue No. 4 : No

Relief : Petition allowed as per the operative part of the Award.

REASONS FOR FINDINGS

Issues No.1 to 3 :

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Smt. Raj Kumari examined herself as PW1 and filed her affidavit in evidence, which is exhibited as Ex. PW1/A. In her affidavit, she reiterated the contents of her statement of claim. She also filed a document purportedly in support of her claim, which is exhibited as Ex. PW1/B.

11. In the cross-examination, she admitted that she was class-D employee and had initially been engaged for a period of 27 days on 1-9-2003. She also admitted that she was again appointed in October, 2003 on a basic pay of Rs. 2,550/- plus 50% D.A., as applicable to the Central Employees. She admitted her signature in red circle on letter dated 4-2-2004, whereby she had been given a warning. Volunteered that, she being an office peon had been asked to clean the toilets of the children, when she had informed that she would intimate the safai karamchhari. She denied that she had received a termination notice Mark-A. She also denied that after September, 2004 her services had been engaged as that of a safai karamchhari, instead of a peon. She feigned ignorance that in between November, 2004 to April, 2006 many a times she had been engaged an Ayah on temporary basis. Self stated that in this regard she had not been informed in writing. However, she admitted that she had not been compelled to join her duties by the respondent. She does not know that the respondent had given her salary as per AWES rules. She admitted that she had been availing the leave during the service. She admitted that Vikrama Devi and Kamla Devi were senior to her. She specifically denied that she had been charge-sheeted and given a letter on her termination in the year 2013. She feigned ignorance that she had been given a month's notice at the time of terminating her service. She admitted that every year after the year 2003 she was being given a break of seven days after working for eleven months. She admitted that as and when she had been terminated, she had never made a representation to the management. She also admitted that she had been given all her dues for the work done by her.

12. On the other hand the respondent in support of his contentions existing in his reply has relied upon the testimony of RW1 Shri Venkatesha G. Officiating Principal. Reliance has been placed upon various documents *i.e.* Ex.RW1/A to Ex.RWZ/6.

In the cross-examination, he admitted that the petitioner was a Group D employee. He also admitted that Army Public School is a society and registered under the Societies Act. Further, he admitted that the petitioner had regularly worked with the respondent from September, 2003 to 31-7-2013. Volunteered that, she had not continuously worked, as there were contracts for eleven months. He specifically admitted that as per Ex.PW1/B the petitioner had worked for 240 days or more in each year. He also admitted that the petitioner had been removed from work on 31-7-2013 by the school management and the Principal. He clearly denied that no notice had been given to the petitioner for her disengagement. The petitioner was given one month's salary. She was not given any retrenchment compensation. He also denied that prior to 31-7-2013 no show cause notice had been given to the petitioner. Self stated that she was given counseling and show cause/warning letters. He further denied that the petitioner had never been charge-sheeted. Volunteered that, the counseling and warning letters itself amounted to charge-sheet of the employees who were kept on eleven months contract. However, he admitted that no domestic inquiry had been conducted against the petitioner. Self stated that it is conducted only in case of regular employees. He denied that the school management had resorted to unfair labour practice. He admitted that in Ex.RW1/M all class-D employees have been mentioned and that the name of the petitioner is there at serial No.4. He also admitted that the employee whose name figures at serial no.5 in Ex.RW1/M is still working with them. He further admitted that Rekha Devi, whose name figures at serial No. 9 in Ex.RW1/M is also working with them. Self stated that she is working on outsource basis.

13. Before advertng to the rival legal contentions advanced on behalf of the parties, it is important to consider the relevant provisions of the Act in play in the instant case.

The Industrial Disputes Act, 1947, is:

“An act to make provision for the investigation and settlement of industrial disputes, and for certain other purposes”.

Section 2(s) defines a Workman as:

“2(s). “workman” means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharge or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person.—

- (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or
- (ii) who is employed in the police service or as an officer or other employee of a prison; or
- (iii) who is employed mainly in a managerial or administrative capacity; or
- (iv) who, being employed in a supervisory capacity, draws wages exceeding [ten thousand rupees] per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature].”

Section 2(o) lays down the concept of retrenchment as:

“Retrenchment means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—

- (a) voluntary retirement of the workman;
- (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf;
- (bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein;”
- (c) termination of the service of a workman on the ground of continued ill-health”

14. Smt. Nitika Sharma, the learned counsel appearing on behalf of the respondent contended in her oral and written arguments that the present claim petition is not maintainable as the Army Welfare Education Society is not an instrumentality of the State. Reliance is placed on the decisions of the Hon’ble Allahabad High Court in the cases of V.K. Walia vs. Chairman, Army School & Ors. (2003) 3 UPLBEC 2827; Army School vs. Smt. Shilpi Paul 2005 (1) ESC 342 and the Hon’ble Supreme Court in the case of Integrated Rural Development vs. Ram Payre Pandey 1995 SCC, Supl. (2) 495.

15. On the other hand, Shri N.L. Kaundal, the learned Authorized Representative appearing on behalf of the petitioner contended in his oral as well as written arguments that the petitioner is squarely covered under the definition of “workman” under the Act and that the educational institutions are an industry in terms of Section 2(j) of the Act. The learned Authorized

Representative places strong reliance on the decisions of the Hon'ble Punjab and Haryana High Court and the Hon'ble Karnataka High Court in the cases of Laxmi Devi vs. R.D.S. Public Girls College and Ors. 2016 (148) FLR 856 and Principal, Government I.T.I. Kollegal vs. R. Hema Kumar and Anr. 2016 (149) FLR 1047, wherein it has been held that college and school qualify as industry within the meaning of Section 2(j) of the Act.

16. I am unable to agree with the contention advanced by the learned counsel appearing on behalf of the respondent. The question “who is a workman” has been well settled by various judgments of the Hon'ble Supreme Court. In the case of H.R. Advanthaya vs. Sandoz (India) Ltd. (1997) 5 SCC 737, a Constitution Bench of the Hon'ble Supreme Court has held as under:

“..We thus have three Judge Bench decisions which have taken the view that a person to be qualified to be a workman must be doing the work which falls in any of the four categories, viz, manual, clerical, supervisory or technical and two two-judge bench decisions which have by referring to one or the other of the said three decisions have reiterated the said law. As against this, we have three three-judge bench decisions which have without referring to the decisions in May & Baker, WIMCO and Bunnah Shell cases (supra) have taken the other view which was expressly negated, viz., if a person does not fall within the four exceptions to the said definition he is a workman within the meaning of the ID Act. These decisions are also based on the facts found in those cases. They have, therefore, to be confined to those facts. Hence the position in law as it obtains today is that a person to be a workman under the ID Act must be employed to do the work of any of the categories, viz., manual, unskilled, skilled, technical, operational, clerical or supervisory. It is not enough that he is not covered by either of the four exceptions to the definition. We reiterate the said interpretation.”

17. The issue whether an educational institution is an “industry”, and its employees are “workmen” for the purpose of the Act has been answered by a Seven Judge Bench of the Hon'ble Supreme Court way back in the year 1978 in the case of Bangalore Water Supply and Sewerage Board vs. A. Rajappa and Ors. (1978) 2 SCC 2013. It was held that educational institution is an industry in terms of Section 2(j) of the Act, though not all of its employees are workmen. It was held as under:

“The premises relied on is that the bulk of the employees in the university is the teaching community. Teachers are not workmen and cannot raise disputes under the Act. The subordinate staff being only a minor category of insignificant numbers, the institution must be excluded, going by the predominant character test. It is one thing to say that an institution is not an industry. It is altogether another thinking to say that a large number of its employees are not 'workmen' and cannot therefore avail of the benefits of the Act so the institution ceases to be an industry. The test is not the predominant number of employees entitled to enjoy the benefits of the Act. The true test is the predominant nature of the activity. In the case of the university or an educational institution, the nature of the activity is, ex hypothesis, education which is a service to the community. Ergo, the university is an industry. The error has crept in, if we may so say with great respect, in mixing up the numerical strength of the personnel with the nature of the activity. Secondly there are a number of other activities of the University Administration, demonstrably industrial which are severable although ancillary to the main cultural enterprise. For instance, a university may have a large printing press as a separate but considerable establishment. It may have a large fleet of transport buses with an army of running staff. It may have a tremendous administrative strength of officers and clerical cadres. It may have karamcharis of various hues. As the Corporation of Nagpur has effectively ruled, these operations, viewed in severalty or collectively, may be treated as industry. It would be strange, indeed, if a

university has 50 transport buses, hiring drivers, conductors, cleaners and workshop technicians. How are they to be denied the benefits of the Act, especially when their work is separable from academic teaching, merely because the buses are owned by the same corporate personality? We find, with all defence, little force in this process of nullification of the industrial character of the University's multi-form operations."

18. A perusal of the above mentioned two judgments of the Hon'ble Supreme Court clearly show that the definition of "workman" as given in Section 2(s) of the Act has been interpreted in the most wide terms. Even otherwise the import of the provisions itself is wide ranging. It has been defined in such a way to include any person doing any manual, unskilled, skilled, technical, operational, clerical or supervisory work. Once a person is engaged for hire or reward, oblivious of the fact that whether the terms of employment are expressed or implied, a person would fall within the parameters of a "workman" atleast for the purposes of this Act. Even if a person is working on contract it cannot be said that he does not fall within the definition of a "workman". It could be that being a contractual employee his disengagement may not fall within the definition of "retrenchment" but the same would be dependant upon the requirements of Sub Section (bb) of the provisions of Section 2(oo) of the Act. However, merely being a contractual employee does not mean that a person will not fall within the definition of "workman". So, a peon/Ayah/safai karamchari employed by a school, being an unskilled person, is a workman for the purpose of the Act.

19. Now adverting to the core question regarding the fictional breaks and disengagement of the petitioner. It is the admitted case of the parties that the services of the petitioner were engaged as a Group 'D' employee by the respondent, some times as peon, at times as an Ayah and most of the time as a safai karamchari. It is not in dispute that the petitioner was initially employed on 1st September, 2003 and had worked upto 31-7-2013, as is admitted by Shri Venkatesha G, Officiating Principal of the respondent while appearing as RW1. Reference in this regard can also be made to the documents placed on record by the respondent itself as Ex.RW1/N to Ex.RW1/Z1 and Ex.RW1/Z3 to Ex.RW1/Z5. Admittedly, the services of the petitioner were disengaged by the respondent *w.e.f.* 31st July, 2013 per letter dated 30th July, 2013, copy of which is Ex.RW1/B.

20. Smt. Nitika Sharma, the learned counsel appearing on behalf of the respondent submitted that as the petitioner had been engaged on contract basis for fixed periods, and by taking recourse to the condition/clause of the last appointment letter dated 20th February, 2013, as the services of the petitioner had been disengaged by the respondent on 31-7-2013 during the currency of the contract period, which was to come to an end on 22nd January, 2014, the petitioner is not entitled to any relief.

21. Shri N.L. Kaundal, Learned Authorized Representative appearing for the petitioner, on the other hand, urged that the petitioner having completed 240 days of service within a period of twelve months preceding the date of her termination and in view of the fact that no compensation had been paid as provided under Section 25-F of the Act, the petitioner is entitled for reinstatement with full back wages.

22. In this case the petitioner was appointed from time to time. Her services used to be terminated on the expiry of the period on regular basis, except on one occasion in September, 2004, when her services came to be dispensed with on disciplinary grounds vide letter dated 4th September, 2004 (Ex.RW1/Z2). It is the case of the respondent that since the petitioner was given breaks between the appointments offered for specified periods, the petitioner had not completed 240 days in any calendar year. However, the perusal of the mandays chart Ex.PW1/B produced by the petitioner, which is not disputed by the respondent, shows that the services of the petitioner were initially engaged in September, 2003 by the respondent and that she had worked intermittently

uptil July, 2013. It is, thus, more than clear that even while offering appointments to the petitioner for specified periods vide Ex.RW1/N to Ex.RW1/Z1 and Ex.RW1/Z3 to Ex.RW1/Z5, the respondent intended to avail the services of the petitioner uninterruptedly and she did work continuously till her termination on 31-7-2013. The modus operandi adopted by the respondent to appoint the petitioner for specified periods as per the appointment letters only shows that the said exercise was conducted primarily to frustrate the provisions of the Act. No doubt the petitioner continued to be appointed after each spell, but the respondent ensured that there was substantial time gap between her fresh appointments. Even assuming it was so, it was at best red tapism, as the perusal of the annexures show that the appointments were primarily made in continuation of references made well in time by the petitioner. However, the fact remains that the purpose of issuing successive appointments was to ensure continuity in the working of the petitioner at Army Public School, Yol Cantt. In that sense of the matter even if all the appointments for specified periods are kept in consideration, the petitioner had completed more than 240 days with the respondent in each calendar year. The breaks in between can very safely be said to be fictional breaks. The said breaks were given intentionally with a purpose to frustrate the rights of the petitioner. The practice of the respondent to employ the petitioner continuously, but for the specified periods, clearly falls within the ambit and scope of "unfair labour practice". Even otherwise, the Hon'ble Supreme Court in case of Haryana State Electronics Development Corporation Ltd. vs. Mamni, AIR 2006 SC 2427 has deprecated such a course as was adopted by the respondent to employ the workman for specified periods repeatedly.

23. Then, the entire evidence placed on record shows that in fact no specific contract(s) had been entered into interse the parties. However, even if the last appointment letter (Ex.RW1/N) and the earlier appointment letters themselves are considered to be contracts, admittedly the petitioner had completed more than 240 days in the preceding twelve months of her disengagement. The evidence on record also shows that because of the conduct of the petitioner all was not well between the parties. Ex.RW1/C to Ex.RW1/I and Ex.RW1/Z2 do show that some punitive action was also being contemplated against the petitioner. The deposition of Shri Venkatesha G (RW1) also purports to show that because of the conduct of the petitioner her services had eventually been terminated. Admittedly, no inquiry had been conducted against the petitioner. Shri Venkatesh G (RW1) while under cross-examination was categorical that no domestic inquiry had been conducted against the petitioner. In fact, if the petitioner had to be removed for some dereliction on her part, some inquiry worth the name had to be conducted before taking any punitive action against the petitioner. No doubt, as per stipulation No. 4 of the last appointment letter (Ex.RW1/N) the services of the petitioner could be terminated by giving her one month's notice or salary in lieu thereof, but the said contention per se is against the basic and well recognized canons of principle of justice. If nothing else, but for the sake of affording opportunity to explain her conduct the respondent was duty bound to have sought some explanation or conducted some inquiry worth the name before taking any action against the petitioner. No such endeavour was made by the respondent in this behalf. Even otherwise, assuming that there were acts of misconduct on the part of the petitioner, which as per the above mentioned documents were there since the year 2004 onwards till the year 2013, why the petitioner had been reappointed time and again by the respondent as a Group 'D' employee? The reasons to that effect being obscure go to show that the assertion of misconduct attributed to the petitioner or that the said misconduct was the reason for terminating the services of the petitioner seems to be totally baseless. There is nothing on the file to establish that except for the petitioner no one else was available to be engaged as a Group 'D' employee in the Army Public School, Yol Cantt.

24. Even if it is presumed that the services of the petitioner were not disengaged as a punitive measure and Ex.RW1/N is deemed to be some sought of contract, I am afraid that the respondent/management was under an obligation to have complied with the provisions of Section 25-F of the Act. The Hon'ble Supreme Court in S.M. Nilajkar & Ors. vs. Telecom. District

Manager, Karnataka (2003 LLR 470) has held that even where a workman is recruited for discharging work under a project or under some specific scheme the provisions of Section 25-F of the Act are attracted. In case titled Sudershan Rajpoot vs. U.P. State Road Transport Corporation (2015 LLR 95), it has been held by the Hon'ble Supreme Court that where a bus driver, who was engaged on contractual basis, but had worked for more than 240 days, his termination without any retrenchment compensation or holding of inquiry for alleged negligence was held to be illegal. The engagement of the petitioner, as per my findings above, was continuous right from the year 2003 till the year 2013. The petitioner had completed more than 240 days in each calendar year. The respondent, thus, was resorting to the process of issuing contractual appointments to merely frustrate the provisions of the Act. The Hon'ble Madras High Court in Management of Tamil Nadu State Transport Corporation (Madurai Division-1) Ltd., Madurai vs. Presiding Officer, Labour Court Madurai and Anr. (2016 LLR 736) has held that when the services of the workman are required perennially for a long time, either by renewing the contract periodically or otherwise, termination of his services will amount to unfair labour practice since such a termination would not be saved by Section 2(oo) (bb) of the Act. The action of the respondent does not seem to be bonafide.

25. "Retrenchment", otherwise in its original connotation means discharge of labour as surplus though the business or work itself is continued. It is well settled by now that the labour laws being beneficial pieces of legislation are to be interpreted in favour of the beneficiaries, both in case of doubt or where it is possible to take two views of a provision. From the seniority list (Ex.RW1/M) on record, which is an admitted document on the part of the respondent, it is clear that the persons mentioned at serial No.5 to 9 of the list are junior to the petitioner, whose name figures at serial No.4. Shri Venkatesh G (RW1) was categorical that Ex.RW1/M reflects all Class-D employees. He was also categorical that the workman mentioned at serial No. 5 of Ex.RW1/M is still working with them. He also clearly admitted that Rekha Devi whose name figures at serial No.9 in Ex.RW1/M is also working in the school. In fact, had the action of the respondent been bonafide it was the last person to have been engaged, to be shown the door first as per the principle of 'last come first go' (Section 25-G of the Act). In the present case rather than disengaging the last person the respondent chose to do away with the services of the petitioner. The respondent, thus, also did not follow the mandatory Section 25-G of the Act. Admittedly, no notice as contemplated under Section 25-F of the Act was issued to the petitioner nor any retrenchment compensation was paid to her. As is clear from the ratio of the judgment laid down in S.M.Nilajkar's case, discussed hereinabove, the petitioner was entitled to the protection of Section 25-F of the Act. Admittedly, no such steps were taken by the respondent. It is, thus, held that the disengagement of the petitioner was illegal and against the mandate of the provisions of Sections 25-F and 25-G of the Act.

26. In the statement of claim it has specifically been asserted by the petitioner that she is not gainfully employed from the date of her illegal termination. In her oral statement by way of affidavit on oath, the petitioner specifically took the stand that she was not gainfully employed since her disengagement. This is sufficient evidence by a workman to prove her "non gainful employment". In this behalf support can ably be drawn from the judgment of our Hon'ble High Court titled Pradhan Bajinath Tea Estate Majdoor Sangh vs. State of Himachal Pradesh & Ors. (2019 LLR 1239). Therefore, the burden shifted upon the respondent to contradict the statement of the petitioner by leading cogent, ocular or documentary evidence to prove her gainful employment. Strangely enough so has not been done by the respondent. It has neither been pleaded nor proved on record by the respondent that the petitioner was gainfully employed during the period of litigation after her termination. The Hon'ble Supreme Court in Manorma Verma (Smt.) vs. State of Bihar & Ors., 1995 Supreme Court Cases (L&S) 193 has held that once termination is found to be illegal consequential order of grant of back wages must follow unless there are reasons justifying a departure from normal order.

27. It is, thus, held that fictional breaks were provided to the petitioner by the respondent, which amounts to unfair labour practice as per the Fifth Schedule appended to the Act and that her disengagement from service by the respondent was also not in consonance with the provisions of the Act. Consequently, the termination of the petitioner *w.e.f.* 31-7-2013 is set aside and quashed and the period of fictional breaks is ordered to be counted for the purpose of continuous service. The respondent is directed to re-engage the petitioner forthwith on the same post. The petitioner shall also be entitled to seniority and continuity from the date of her disengagement with 50% back wages from the date of termination till the date of reinstatement.

28. The issues are accordingly decided in favour of the petitioner and against the respondent.

Issue No. 4 :

29. It has not been shown by the respondent as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned counsel appearing for the respondent at the time of arguments. Otherwise also, from the pleadings and evidence on record, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is decided against the respondent and in favour of the petitioner.

Relief :

30. In the light of what has been discussed hereinabove, the present reference/claim petition succeeds and the same is allowed. It is held that artificial/fictional breaks were provided to the petitioner by the respondent *w.e.f.* 1-9-2003 to 31-7-2013 wrongly and illegally. The period of fictional breaks is ordered to be counted for the purpose of continuous service. The termination of the petitioner is also set aside and quashed. The respondent is hereby directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity in service from the date of her illegal termination *i.e.* 31-7-2013, with 50% back wages from the date of termination till the date of reinstatement. Parties to bear their own costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 17th day of March, 2021.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial,
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No.	: 25/2015
Date of Institution	: 13-01-2015
Date of Decision	: 23-3-2021

Shri Gian Chand s/o Shri Hari Singh, r/o Village Path, P.O. Sainthal, Tehsil Joginder Nagar, District Mandi, H.P. . *Petitioner.*

Versus

The Executive Engineer, B&R Division, H.P.P.W.D., Joginder Nagar, District Mandi, H.P.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR.

: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Anil Sharma, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Gian Chand s/o Shri Hari Singh, r/o Village Path, P.O. Sainthal, Tehsil Joginder Nagar, District Mandi, H.P. during October, 1998 to 31-08-2007 by the Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner as set out in the statement of claim is that his services were engaged by the respondent as a daily waged beldar on muster roll basis *w.e.f.* October, 1998 and that he had worked under Assistant Engineer, HPPWD, Sub Division B&R Joginder Nagar. No appointment letter was ever given to him at the time of his appointment. The muster rolls were issued to the petitioner only for 15, 18 and 20 days in a month. The respondent had given fictional breaks to the petitioner from time to time from the date of his initial engagement upto 31-8-2007. Thereafter, the services of the petitioner have been engaged continuously by the respondent. A pick and choose policy was adopted by the respondent, as some junior workers were engaged continuously, whereas the seniors, like the petitioner, were being engaged with fictional breaks to deprive them of the permanent status as per Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). The principle of ‘last come first go’ was not adhered to by the respondent and persons, namely, S/Sh./Smt. Rajinder Kumar, Subhash Chand, Sumer Singh, Sanjeev Kumar, Gudi Devi, Prithi Chand, Rajinder Pal, Dalip Singh, Gautam Ram, Bhawani Ram and Ram Dhan were engaged without giving them any fictional breaks. The act of the respondent was wrong, illegal and against the provisions of Sections 25-G and 25-H of the Act. Smt. Ruma Devi workman had been regularized on 24-11-2008. He is entitled for regularization from the date of the regularization of his junior with other consequential benefits. Hence, the petition.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability, that the petition was bad for non joinder of necessary parties and also on account of delay and laches. The contents of the petition were denied on merits. It is asserted that the services of the petitioner were engaged in October, 1998. The petitioner was

employed by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar. The respondent's office was created in the month of January, 2004 *vide* notification dated 9th December, 2003. The office started functioning *w.e.f.* 2nd January, 2004 and after the creation of the respondent's office, the petitioner and some other workmen were transferred to the newly created Division from the National Highway Division, Joginder Nagar. The claim of the petitioner prior to 01-1-2004 pertains to the office of the Executive Engineer, National Highway Division, Joginder Nagar, who is not a party to the case. It is denied that fictional breaks were given to the petitioner by the respondent upto the year 2007. Rather, the services of the petitioner were engaged as per the availability of work and funds. He was made aware of this fact at the time of his engagement. His services have been regularized *vide* order dated 18-8-2015. It is specifically denied that the respondent had regularized similar situated persons by ignoring the petitioner. Hence, it was prayed that the petition be dismissed.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 02-1-2020:

1. Whether time to time termination of services of the petitioner during October, 1998 to 31-08-2007 by the respondent is illegal and unjustified, as alleged? . . .*OPP.*
2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable, as alleged? . . .*OPR.*
4. Whether the claim petition is bad for non-joinder of parties, as alleged? . . .*OPR.*
5. Whether the claim petition is bad on account of delay and laches, as alleged? . . .*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed.

7. Arguments of the learned Counsel/Authorized Representative for the petitioner and the learned Deputy District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1	: Yes
Issue No. 2	: Discussed
Issue No. 3	: No
Issue No. 4	: Not pressed
Issue No. 5	: No

Relief

: Petition is allowed as per the operative portion of the Award.

REASONS FOR FINDINGS*Issues No.1 and 2 :*

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The short and simple case of the petitioner is that the respondent had been resorting to giving fictional breaks from the very inception upto 31-8-2007, as only muster rolls for 15 to 20 days were issued to him.

11. In this regard Gian Chand (petitioner) stepped into the witness box as PW1. He in his affidavit Ex.PW1/A submitted under Order 18 Rule 4 of the Code of Civil Procedure has deposed that the respondent had engaged him since October, 1998 on muster rolls, but they were issued only for 15 to 20 days. The said process continued till 31-8-2007.

12. Conversely, Shri B.S. Thakur, Executive Engineer, Joginder Nagar (respondent) testified as RW1. He placed on record copy of office order as Ex.RW1/B, copy of notification dated 9-12-2003 as Ex.RW1/C and copy of year-wise working days of the petitioner as Ex.RW1/D. In his cross-examination, he denied that fictional breaks were given to the petitioner by the department from the month of October, 1998 upto the year 2007. Volunteered that, the petitioner himself had not been coming to work. However, he admitted that there was no correspondence of the department with the petitioner regarding his not reporting for work. He also admitted that after the issuance of letter dated 14-9-2007, Ex.PW1/C no fictional breaks were provided to the daily wagers. Further, he admitted that Ex.PW1/B is a document of their department, which reflects the names of some of the workers. He clearly admitted that the persons figuring at serial No. 4 to 11 in Ex.PW1/B were junior to the petitioner. He cannot say that the petitioner is entitled for regularization from the year 2007.

13. There is no denial of the fact that Reference No.306/2014 titled as Smt. Ruma Devi vs. The Executive Engineer, HPPWD, (B&R) Division, Joginder Nagar, District Mandi, H.P. was decided by this Court/Tribunal on 28-7-2015. Reference in this regard can be made to copy of such Award placed on record as Ex.PW1/D. While deciding the said reference, it was held by this Court/Tribunal that the workman therein was in continuous service with the respondent from her respective date of engagement and the breaks which were given to her by the respondent being fictional in nature shall have no effect on her seniority and continuity of service. Manifest that it is not in one odd case, but in the case of a number of workmen that such procedure had been adopted by the respondent. Why, how and under what circumstances the muster rolls were issued only for 15 to 20 days to the workman has not been spelt out by the respondent either in his pleadings or in his evidence. It is the version of the respondent that at his own request the petitioner was engaged as a daily waged beldar, as per the availability of work and funds with the department. There is no cogent, convincing, strong and reliable evidence on record to substantiate this plea, except for the self serving testimony of the respondent.

14. On the other hand, the mandays chart of eleven workmen Ex.PW1/B shows that workmen, namely, Shri Sanjeev Kumar was engaged in the year 1999, Smt. Guddi Devi in July, 2000, Shri Prithi Pal Singh in October, 2001, Shri Ravinder Kumar in December, 2001, Shri Dalip Singh in July, 2002, Shri Gautam Ram in April, 2002, Sh. Bhawani Singh in November, 2000 and

Shri Ram Dhan in February, 2003. Their names figure at serial Nos. 4 to 11 in Ex.PW1/B. A perusal of Ex.PW1/B shows that all the aforementioned workmen were being offered muster rolls for a full month. Admittedly, even these workmen are employed in B&R Division HPPWD, Joginder Nagar. The respondent while appearing as RW1 has placed on record the mandays chart of the petitioner as Ex.RW1/D. Why the petitioner, who was admittedly senior to the aforesaid workmen, was not granted the muster rolls for the entire months from the month of October, 1998 upto 31-8-2007, has neither been explained nor there seems to be any plausible reason for the same. The respondent has also not explained as to why all the above-named workmen, who were junior to the petitioner, were not being given any breaks. Indisputably, the nature of job of all these workmen was similar to that of the petitioner. As discussed above, the reasons to that effect being obscure only go to show that the story put forth by the respondent that as adequate work and funds were not available, the petitioner was not being granted the muster rolls for the entire month is incorrect. After August, 2007 the respondent had started giving muster roll for the entire month to the petitioner, as is evident from the pleadings and substantive evidence of the petitioner. He continued working uninterruptedly but only for 15 to 20 days in a month right from the month of October, 1998 till 31-8-2007. Certain similarly situated persons, however, continued to be granted muster roll for the full month. The respondent was either resorting to favouritism or acting in a partisan manner to the petitioner or was simply resorting to such process with an object of depriving him of the status and privileges of a permanent workman, entitling him to regularization, as per the policy of the State Government. It is an act of gross discrimination which is *ex facie* borne out from the record. There can be no two opinions about it. Mere glance at the record highlights the glaring discrepancy and discrimination perpetuated by the respondent.

15. The aforesaid act of the respondent, as discussed above, is not only an 'unfair labour practice' as per the provisions of the Section 2(ra) of the Act, but is also against the provisions of Section 25-B of the Act, which *inter-alia* stipulates that the workman shall be in 'continuous service', except because of an interruption on account of sickness authorized leave, accident, strike which is illegal or lock out and the cessation of work which is not due to any fault on the part of the workman. The action of the respondent in not intentionally issuing muster roll for the entire month to the petitioner was not due to any fault of his. The cessation of work was caused due to the arbitrary and discriminatory attitude of the respondent. Therefore, it has to be presumed that the workman *i.e.* petitioner was in 'continuous service'. He continued serving the respondent uninterruptedly from the date of his engagement *i.e.* October, 1998. The sole inference which can be drawn from the entire circumstances discussed above is that the action of the respondent in giving fictional breaks to the petitioner and in the process disengaging him after 15 to 20 days every month from the month of October, 1998 till 31-8-2007 was illegal and against the provisions of the Act.

16. The upshot is that the petitioner was in continuous uninterrupted service with the respondent from the month of October, 1998 till 31-8-2007. The breaks given to him by the respondent were fictional in nature and they shall have no effect on his seniority and continuity in service. His seniority shall be reckoned from his initial date of engagement, *i.e.* October, 1998.

17. These issues under discussion are accordingly decided in favour of the petitioner and against the respondent.

Issue No. 3 :

18. In view of what has been held under the foregoing issues, the petition is perfectly maintainable to the extent the same relates to the relief(s) the petitioner is found entitled to. Even otherwise, nothing has been brought to my notice by the respondent to show as to how the reference is not maintainable. The issue under discussion is accordingly decided against the respondent and in favour of the petitioner.

Issue No. 4 :

19. Not pressed.

Issue No. 5 :

20. In Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another. (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

21. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Hence, this issue under discussion is decided in favour of the petitioner and against the respondent.

Relief:

22. As a sequel to my findings on issues above, the instant claim petition succeeds and the same is allowed. It is held that the petitioner was in continuous uninterrupted service with the respondent from the month of October, 1998 upto 31-8-2007. The breaks given by the respondent to the petitioner from the month of October, 1998 upto 31-8-2007 were artificial/fictional in nature. This period of fictional breaks is ordered to be counted for the purpose of continuous service, except back wages. His seniority shall be reckoned from the month of October, 1998. Parties to bear their own costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today this 23rd day of March, 2021.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 140/2015
Date of Institution : 26-3-2015
Date of Decision : 24-3-2021

Shri Vipin Kumar s/o Shri Bhim Singh, r/o Village Dehrian, P.O. Samirpur, Tehsil and District Kangra, H.P. *Petitioner.*

Versus

The Block Medical Officer, Tiara, District Kangra, H.P.

. Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. K.K. Chaudhary, Adv.

For the Respondent : Sh. Anil Sharma, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether the termination of the services of Shri Vipin Kumar s/o Shri Bhim Singh, r/o Village Dehrian, P.O. Samirpur, Tehsil and District Kangra, H.P. by (1) The Block Medical Officer, Tiara, Tehsil and District Kangra, H.P. (2) The Medical Officer-I/C-cum-Member Secretary, Rogi Kalyan Samiti, Tiara (Kangra), Tehsil and District Kangra, H.P. w.e.f. 01-04-2013 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and amount of compensation the above aggrieved workman is entitled to?”

2. The case of the petitioner as set out in the statement of claim is that he was appointed as a chowkidar (watchman) on daily waged basis by Rogi Kalyan Samiti at Public Health Centre, Tiara Tehsil and District Kangra, H.P. vide appointment letter dated 16-2-2009. He had joined on 26-2-2009 and had worked as a chowkidar (watchman) continuously under the respondents upto 31-3-2013. Earlier he was paid a salary of Rs.3,000/- per month i.e. Rs.100/- per day. He had lastly drawn the salary @ Rs.150/- per day. He had discharged his duties honestly to the satisfaction of the respondents. He had worked for more than four years without any break. However, his services were terminated by the respondents on 31-3-2013 on the ground of lack of financial resources vide letter dated 29-3-2013, which was received by him on 30-3-2013. Along-with him the services of one lab assistant had also been terminated. However, subsequently the services of that lab assistant had been restored, who was also working under the Rogi Kalyan Samiti. As per the information received under the Right to Information Act, the closing balance of the Rogi Kalyan Samiti as on 31-3-2013 was Rs. 2,52,634/-, and which funds were being given to pay the salaries of the Rogi Kalyan Samiti employees. It is also asserted that as per the notifications issued by the Department of Health, on completion of three years of contractual service, it was to be converted into Government contract. Since the petitioner had completed four years of service as a chowkidar, he is liable to be reinstated on this ground alone. No seniority list of the employees who had been working under Rogi Kalyan Samiti of the Government has been prepared by the respondents. The services of the petitioner were terminated illegally. He, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondents appeared. They filed a reply taking preliminary objection regarding lack of maintainability. The contents of the petition were denied on merits. However, it is admitted that the petitioner was engaged as a chowkidar on daily waged basis under Rogi Kalyan Samiti in Primary Health Centre, Tiara, District Kangra, H.P. vide letter dated 16-2-2009. He had joined the duties on 27-2-2009 in the afternoon. In the annual meeting of the governing body of Rogi Kalyan Samiti of Primary Health Centre, Tiara on dated 9-1-2009, it was resolved to appoint a chowkidar on daily wage basis as per Government rates. Only thereafter the petitioner was appointed as such. Rogi Kalyan Samiti is an independent body governed by its guidelines. It is also

admitted that the petitioner had served as a chowkidar at Primary Health Centre, Tiara upto 31.3.2013. It is specifically denied that he had lastly drawn the salary @ Rs.45000/- per month. The petitioner had been appointed temporarily on daily wage basis, as per the appointment letter and the agreement entered into between the petitioner and the Rogi Kalyan Samiti for a period of one year. On completion of the period, every year the annual meeting of the governing body of the Rogi Kalyan Samiti, Tiara was held and on careful assessment of the resources, out of which the wages were to be paid, new contracts with the petitioner were executed from time to time for a period of one year each. It is denied that the lab assistant had also been terminated along-with the petitioner. After 31-3-2013 the Rogi Kalyan Samiti had not entered into a new contract with the petitioner, as the user charges, out of which the wages were to be paid to the petitioner, were found insufficient. The policy of the State Government for the staff serving under the Rogi Kalyan Samiti applied only to those employees who had been appointed by the Government through the Samiti after taking approval of the Finance Department, *i.e.* for the posts of Medical Officer, Staff nurses, Pharmacists etc. The petitioner had not been appointed by the Government through Rogi Kalyan Samiti, so the Government policy did not apply to him. Since the petitioner had been engaged by the Rogi Kalyan Samiti, no seniority list was prepared. The petitioner has been paid the full payment upto 31-3-2013 and there has been no violation of any of the provisions of Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). It is, thus, prayed that the claim petition be dismissed.

4. While filing the rejoinder the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court vide order dated 6-8-2015:

1. Whether termination of the services of the petitioner by the respondents *w.e.f.* 01-04-2013 is/was improper and unjustified as alleged? . . .*OPP.*
2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the petition is not maintainable in the present form as alleged? . . .*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed.

7. Arguments of the learned counsel for the petitioner and the learned Deputy District Attorney for respondents heard and records gone through. Written arguments only filed by the petitioner have also been gone through by me.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 : No

Issue No. 2 : Negative

Issue No. 3 : Yes

Relief. : Petition dismissed per operative of the Award.

REASONS FOR FINDINGS*Issues No.1 And 2*

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Vipin Kumar examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit he reiterated the contents of his statement of claim. He also filed certain documents purportedly in support of his claim which are exhibited as Ex. PW1/B to Ex. PW1/H and Mark A1 to Mark A3.

In the cross-examination, he stated he is doing the days drudgery these days. He admitted that he had joined on 27-2-2009 at PHC Tiara. He also admitted that he had joined as per the agreement entered into between him and the Rogi Kalyan Samiti. He admitted his signatures on Ex.PW1/E1 to PW1/E4. He feigned ignorance that he was being paid the wages through user charges of Rogi Kalyan Samiti. However, he admitted that the user charges were self generated by the Rogi Kalyan Samiti. He clearly admitted that persons were being employed through Rogi Kalyan Samiti in two ways, one who were being appointed on behalf of the Government and the others through a resolution passed in the meeting of the Samiti. Further, he admitted that due to paucity of funds Sumit Kumar, Lab Technician had been removed on year ago. He also admitted that thereafter Sumit Kumar has been working on outsourced basis and that no payment is being made to him by the Rogi Kalyan Samiti. He denied that he is making a phoney statement.

11. Conversely, Dr. Sneh Sood, Block Medical Officer, Primary Health Centre, Tiara, Tehsil & District Kangra testified as RW1. In her affidavit Ex. RW1/A filed as per Order 18 Rule 4 CPC, she corroborated on oath the contents of the reply preferred by the respondents.

In the cross-examination, she admitted that the petitioner was engaged as a chowkidar in the hospital. Volunteered that, he was engaged from the funds of Rogi Kalyan Samiti. She admitted that Rogi Kalyan Samiti is being run as per the instructions and directions issued by the Government. Self stated that it is an autonomous body. She clearly admitted that the petitioner was being paid the salary on monthly basis. Further, she admitted that the petitioner had continuously worked upto 31-3-2013. Self stated that he was being kept on contract basis yearly. She specifically denied that no month's notice had been served upon the petitioner prior to his disengagement. Volunteered that, a notice had been given. She admitted that no one month's advance salary had been paid to the petitioner. She specifically denied that the services of the petitioner had wrongly been dispensed with by them.

12. Ex. RW1/B is the copy of Office Order dated 9th September, 2010 regarding financial guidelines for utilization of annual maintenance grant and untied funds at Primary Health Centre/Community Health Centre Level.

13. Ex.RW1/C is the copy of quarterly meeting dated 9-1-2009 of PHC Tiara, Kangra.

14. Ex.RW1/D1 to Ex.RW1/D4 are the copies of yearly meetings of Governing Body of RKS, PHC Tiara, Kangra.

15. Ex.RW1/E1 and Ex.RW1/E4 are the copies of agreements executed between Shri Sumit Kumar and M.D.-cum-Chairman, Rogi Kalyan Samiti, PHC Tiara, Kangra.

16. Ex.RW1/F is the copy of guidelines for the Rogikalyan Samiti in Government Health Institutions of Himachal Pradesh.

17. Ex.RW1/G is the copy of mandays chart relating to the petitioner.

18. It is an admitted fact that the services of the petitioner were engaged as a chowkidar (watchman) by the Rogi Kalyan Samiti in the Primary Health Centre, Tiara. Although, the petitioner claimed that he had joined the service in the Primary Health Centre on 26-2-2009, but he had to admit in his cross-examination that he had joined on 27-2-2009. The mandays chart Ex.RW1/G produced by the respondent has not been disputed by the petitioner. It shows that the petitioner had only worked for two days in the month of February, 2009. Manifest that the petitioner had joined the service only on 27-2-2009 in the Primary Health Centre at Tiara. The latter has not denied the fact that the petitioner was initially employed on 27-2-2009 and that he had worked upto 31-3-2013.

19. It is often said and rightly too that a man may tell lies, but the document does not. It is the basic law that documentary evidence as compared to oral evidence has to be given weight.

20. From the evidence available on the file and in particular the documents Ex.PW1/E1 to Ex.PW1/E4 and Ex. PY, being the copies of contracts/agreements executed in between the petitioner and the Rogi Kalyan Samiti, Primary Health Centre, Tiara, it can be gathered that the petitioner had worked as a chowkidar in the Primary Health Centre, Tiara on contractual basis from time to time. Admittedly, all the above-mentioned documents are signed by the petitioner. It is well known that a person signing a document is presumed to agree to its contents. Therefore, the aforementioned contracts/agreements (Ex.PW1/E1 to Ex.PW1/4 and Ex.PY) unfold that the services of the petitioner used to be engaged purely on contractual basis for a fixed period.

21. The petitioner as per his pleadings and evidence on record admitted that he was relieved from his duties by the respondents on 31st March, 2013. It is not in dispute that the term of contractual employment of the petitioner was not renewed *vide* a letter dated 29-3-2013 (Ex.PW1/C). As per the text and tenor of this letter, the governing body of the Rogi Kalyan Samiti, Primary Health Centre, Tiara in its annual meeting held on 14-3-2013 had decided not to extend the contractual employment of the petitioner further due to the paucity of funds and that with the culmination of the contract *w.e.f.* 31-3-2013, his services would automatically come to an end.

22. Ex.PY is the copy of last contract/agreement dated 1st April, 2012, which was executed in between the petitioner and Rogi Kalyan Samiti, Primary Health Centre, Tiara. It depicts that the services of the petitioner were engaged as a chowkidar from 1st April, 2012 to 31st March, 2013 purely on temporary contract basis on payment of wages as paid to the daily wagers as per the Government rates as applicable from time to time, which at that time were Rs.130/- per day. In Ex.PY, it has been highlighted that the contractual appointment was purely temporary. As already mentioned, it is the admitted case of the petitioner that he was relieved from his duties by the respondents on 31st March, 2013, *i.e.* the day on which the term of the contractual employment came to an end.

23. From the evidence available on the file, it is abundantly clear that the petitioner was only a contractual employee/chowkidar who served the respondents/Primary Health Centre, Tiara in different spells from 27th February, 2009 to 31st March, 2013 on payment of wages as payable to the daily wagers on Government rates from time to time. The term of contractual employment of the petitioner as per the last contract/agreement Ex.PY had come to an end on 31st March, 2013. *Vide* letter Ex.PW1/C, the petitioner had been intimated that immediately after 31st March, 2013 on the culmination of the contract his appointment would not be renewed due to scarcity of funds available with the Rogi Kalyan Samiti. Non renewal of the term of contractual employment does not come within the mischief of the word "retrenchment" as per the Clause (bb) of Section 2(oo) of the Act.

24. That being so, by no stretch of imagination it can be said that the services of the petitioner were wrongly and illegally dispensed with by the respondents. The latter have not flouted any of the provisions of the Act.

25. Otherwise too, the petitioner has not divulged the names of the persons who were employed by the respondents after the termination of his services, either in his pleadings or the evidence.

26. Such being the situation, I have no hesitation to conclude that the respondents have not flouted the provisions of Sections 25-F, 25-G and 25-H of the Act. The termination of the services of the petitioner by the respondents cannot be termed as “retrenchment” particularly when the terms and conditions of engagement were to the knowledge of the petitioner and he had joined the service after admitting the same to be correct.

27. It appears to me that the avarice of the petitioner to grab the job and money has forced him to file a totally false and baseless claim. He is not entitled to any relief.

28. Both the issues are decided against the petitioner and in favour of his opponent.

Issue No. 3 :

29. Keeping in view my findings on issues No. 1 and 2 above, it is held that the claim petition is not maintainable in the present form.

30. At the cost of reiteration, I will like to add that the term of contractual appointment of the petitioner as per the contract/agreement dated 1-4-2012 (Ex.PY) was for a period of one year *w.e.f.* 1st April, 2012 to 31-3-2013. Thus, the term of contractual appointment of the petitioner/claimant came to an end on 31-3-2013. On the expiry of the period of the contractual appointment, there cannot be an automatic extension of the period of the engagement of the services of the petitioner. The term of contractual appointment could have further been extended at the mutual discretion of both the parties only. In view of these facts, the petitioner has no right to continue in service after 31-3-2013 and the respondents cannot be directed to reinstate his services.

31. This issue is also decided against the petitioner and in favour of the respondents.

Relief :

32. As a sequel to my findings on the various issues above, the present claim petition being meritless, not maintainable and mala fide, fails. It is, therefore, dismissed with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today this 24th day of March, 2021.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT MANDI)**

Ref. No. : 295/2015

Date of Institution : 13-7-2015

Date of Decision : 26-3-2021

Shri Tara Chand s/o Shri Chaina Ram, r/o Village Khalada, P.O. Dharan, Tehsil Sadar, District Mandi, H.P. . *Petitioner.*

Versus

The Executive Engineer, I.& P.H. Division, Mandi, District Mandi, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. S.S. Sippy, AR

For the Respondent : Sh. Anil Sharma, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

Whether the industrial dispute raised by the worker Shri Tara Chand s/o Shri Chaina Ram, r/o Village Khalada, P.O. Dharan, Tehsil Sadar, District Mandi, H.P. before the Executive Engineer, I.&P.H. Division, Mandi, District Mandi, H.P. *vide* demand notice dated 07-09-2011 regarding his alleged illegal termination of service during July, 1996 suffers from delay and laches? If not, Whether termination of the services of Shri Tara Chand s/o Shri Chaina Ram, r/o Village Khalada, P.O. Dharan, Tehsil Sadar, District Mandi, H.P. by the Executive Engineer, I.&P.H. Division, Mandi, District Mandi, H.P. during July, 1996 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. In pursuance to the reference the petitioner has averred in the statement of claim that he was engaged as a daily waged beldar by the respondent in the month of June, 1995. He had worked as such till the month of June, 1996. His services were orally dispensed with by the respondent on the pretext of lack of funds/budget. However, he was assured that he would be called to work, as and when funds/budget were available. But, he was never called again thereafter. He had approached the respondent time and again for his re-engagement, but without success. 81 persons junior to him were retained by the respondent. S/Sh. Ludermani, Anup Ram, Ram Singh, Charitra etc., who were also junior to the petitioner, have been regularized. The petitioner had completed more than 240 days of work. No opportunity of re-engagement was ever given to him. The action of the respondent is stated to be in violation of the provisions of Sections 25-F (a), 25-F(b), 25-B, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). He is unemployed till date. Hence, the petition for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability and that the petition was bad on account of delay and laches. The contents of the petition were denied on merits. However, it was admitted that the petitioner was engaged as a daily waged beldar *w.e.f.* June, 1995. It is asserted that he had worked intermittently and had left the job of his own sweet will. It is specifically denied that the services of the petitioner had been terminated in the month of June, 1996. The petitioner had never made representation for his re- engagement, except for raising the dispute by filing a demand notice after a lapse about ten years on 7-9-2011. Only those workers had been regularized by the department, who had fulfilled the criteria of regularization as per the Government policy. It is clearly asserted that as the petitioner had not completed 240 days in any calendar year, there was no need to serve a notice upon him under Section 25-F of the Act. Neither any junior had been retained nor engaged by the respondent in place of the petitioner. There has been no violation of any of the provisions of the Act by the respondent. The petitioner is gainfully employed, being an agriculturist. Hence, it is prayed that the claim petition be dismissed.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 5-1-2016:

1. Whether the industrial dispute raised by petitioner *vide* demand notice dated 7-09-2011 qua his termination of service *w.e.f.* July, 1996 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? . . .*OPP.*
2. Whether termination of the services of petitioner by the respondent *w.e.f.* July, 1996 is/was illegal and unjustified as alleged? . . .*OPP.*
3. If issue No. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
4. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR.*

Relief.

6. Thereafter, the parties to the list were directed to adduce evidence in support of the issues so framed.

7. Arguments of the learned Authorized Representative for the petitioner and the learned Deputy District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

- | | |
|-------------|-----------------------|
| Issue No. 1 | : Negative |
| Issue No. 2 | : Decided accordingly |
| Issue No. 3 | : Decided accordingly |
| Issue No. 4 | : Not pressed |

Relief.

: Petition is partly allowed awarding lump sum compensation of ₹50,000/- per operative part of the award.

REASONS FOR FINDINGS*Issues No.1 to 3 :*

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Tara Chand examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim.

In the cross-examination, he admitted that he had worked till the year 1996. He denied that only in the year 2011 he had issued a demand notice. Volunteered that, a legal notice was given in the year 1998. He clearly admitted that from the year 1998 upto September, 2011 he had not made any representation. He specifically denied that he had left the job of his own sweet will. He also denied that he had never been removed from work by the department. He does the days' drudgery privately. He owns 3-4 big has land, which he cultivates. He denied that no junior to him had been kept by the department. He admitted that only those persons have been regularized, who had worked regularly. He denied that he was making a phoney statement.

11. Conversely, Shri Arun Kumar Sharma, Executive Engineer, I&PH Division, Mandi, District Mandi, H.P. (respondent) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by the respondent.

In the cross-examination, he admitted that the petitioner had worked from June, 1995 upto June, 1996. He also admitted that as per the record no notice had been issued to the petitioner regarding his absence. He further admitted that as per the record the petitioner had completed 294 days of work in the preceding twelve months. Volunteered that, the department had never terminated the petitioner. Further, he admitted that no opportunity of re-engagement was provided to the petitioner before engaging the workers as per seniority list Ex.PW1/E. He denied that the petitioner had wrongly been terminated by the department.

12. Ex.RW1/B is the copy of mandays chart relating to the petitioner.

13. It is an admitted fact that the services of the petitioner were engaged as a daily waged beldar by the respondent. The latter has not denied the fact that the petitioner was initially employed in the month of June, 1995 and that he had worked upto the month June, 1996. Shri Arun Kumar Sharma (RW1), the respondent in his substantive evidence was categorical that the petitioner had worked in the department from the month of June, 1995 till the month of June, 1996. The mandays charts, one produced by the petitioner as Ex.PW1/D and the other by the respondent as Ex. RW1/B, disclose that the services of the petitioner were initially engaged in the month of June, 1995 by the respondent and that he had worked upto June, 1996.

14. The version of the petitioner is that his services were wrongly and illegally terminated by the respondent in the month of July, 1996. While denying the said fact, the respondent has pleaded that the petitioner, who had worked intermittently, had left the job of his own accord and free volition.

15. It is well known that abandonment has to be proved by the employer like any other fact. Therefore, the burden of proving of abandonment is upon the respondent. It has been laid down by our own Hon'ble High Court in case titled as Narain Singh vs. The State of Himachal Pradesh & Ors., 2016 (3) Him L.R. 1875 that voluntarily abandonment of work by a workman is required to be established by way of cogent and reliable evidence by the employer. Similarly, in case titled as State of Himachal Pradesh & another vs. Shri Partap Singh, 2017 (1) Him L.R. 286, it has been held by our own Hon'ble High Court that abandonment is not to be lightly presumed, but it has to be unequivocally proved by the employer. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. Mere statement of Shri Arun Kumar Sharma, (RW1) alleging that the workman had abandoned the services is entirely insufficient to discharge the said onus. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. Absence from duty is a serious misconduct and the principle of natural justice did require that some sort of a fact finding inquiry was got conducted by the respondent. In the present case as it emerges from the evidence on record, so was not done by the respondent. Then, 'animus' to abandon, it is well settled, must necessarily be shown to exist, before a case of abandonment can be said to have been made out. No evidence of any such 'animus' on the part of the petitioner is forthcoming in the present case. Thus, the plea of abandonment put forth by the respondent/employer is not established.

16. Then, it was contended by the learned Deputy District Attorney for the respondent that the petitioner had not worked for 240 days during the preceding twelve months on daily wages and, therefore, the petitioner cannot claim any protection under the provisions of the Act. The case of the petitioner is that as no one month's notice in writing had been given to him by the department, nor he had been paid the retrenchment compensation, the purported order of retrenchment is illegal, because the conditions precedent as contained in Section 25-F of the Act were not complied with.

17. Claiming to have worked for more than 240 days from the month of June, 1995 till the month of June, 1996, the petitioner in his affidavit Ex.PW1/A claimed to have thus been in continuous service for one year prior to the month of his disengagement. This claim having not been challenged during his cross-examination by the respondent deserves acceptance. More so, in view of the mandays charts Ex.PW1/D (also Ex.RW1/B), the own document of the respondent. The said document is indicative of the petitioner having worked for 294 days from the month of June, 1995 till the month of June, 1996. It also stands clearly admitted by the respondent (RW1) that the petitioner had worked for 294 days in the preceding twelve calendar months as per the record. Section 25-F of the Act, which is alleged to have been violated by the respondent, says:

“25-F. Conditions precedent to retrenchment of workmen.— No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until.—

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

18. In view of this provision, no workman employed in any industry, who has been in “continuous service” for not less than one year, can be retrenched by the employer unless he has been given one month’s notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression “continuous service” has been defined under Section 25-B of the Act, which in its material part reads:

“25B. Definition of continuous service. For the purposes of this Chapter.—

- (3) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;
- (4) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer.—
- (b) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than.—
 - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
 - (ii) two hundred and forty days, in any other case....”

19. Since, the petitioner is proved to have completed more than 240 days during the period of twelve calendar months preceding the date of his retrenchment, which as per the reference took place in the month of July, 1996, his services could not have been terminated unless he was served with one month’s notice and paid the retrenchment compensation as envisaged under Section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act were not complied with by the respondent. The respondent neither paid the retrenchment compensation nor issued any requisite notice to the petitioner, as provided under Section 25-F of the Act. Therefore, the respondent undoubtedly has violated the said provisions of the Act.

20. The principle of “last come first go” is envisaged under Section 25G of the Act. The said Section provides:

“25-G. Procedure for retrenchment.—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and she belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

21. The petitioner’s allegations that the respondent had violated the provisions of Section 25-G of the Act as well, to my mind, does not appear to have been substantiated. The statement of claim, the petitioner’s affidavit Ex.PW1/A as also his cross-examination as PW1 are non-existent in the names of the persons, who being junior to him, were allegedly retained by the respondent after his retrenchment. Then, no seniority list of daily waged category has been placed and exhibited on record by the petitioner to show that persons junior to him were still serving the respondent/

department. Even no co-worker has been examined by the petitioner to substantiate his claim. The bald testimony made by the petitioner (PW1) to the effect that workers junior to him were retained and that their services have been regularized by the respondent cannot be taken as a gospel truth. The material on record, thus, being too scanty and nebulous to lend credence to his allegation that workers junior to him were retained after the termination of his services, the respondent cannot be said to have been proved to have violated the provisions of Section 25-G of the Act.

22. It was also claimed by the petitioner that after his alleged disengagement, new/fresh hands have been engaged by the respondent. As per the mandays chart, Ex.PW1/B (also Ex.RW1/B) the petitioner appears to have worked as a daily waged beldar in Irrigation & Public Health Department, Sub Division, Panarsa, District Mandi. Ex.PW1/E *i.e.* the list of beldar category reveals that from the year 1997 uptil the year 2008 seventeen new/fresh hands were engaged by the respondent in I&PH Sub Division, Panarsa. As per the reference the services of the petitioner stood terminated by the respondent in July, 1996. This indicates that new/fresh hands were employed by the respondent after the termination of the services of the petitioner. There is nothing on the file to establish that at the time of engaging new/fresh hands an opportunity of re-employment was afforded to the petitioner. Shri Arun Kumar Sharma (RW1) in his cross-examination clearly admitted that prior to engaging the workers shown in the list Ex.PW1/E, no opportunity of re-employment was afforded to the petitioner.

23. Such being the situation, I have no hesitation to conclude that the respondent has contravened the provisions of Sections 25-F and 25-H of the Act. The termination of the services of the petitioner is illegal and unjustified.

24. Faced with the situation, the learned Deputy District Attorney for the respondent contended that there being an inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the relief(s) he has prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble Supreme Court in case titled as Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82, wherein it was inter-alia held:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

25. In view of the aforesaid binding precedent, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed. The observations made by our own Hon'ble High Court in case titled as Liaq Ram vs. State of H.P. and ors., 2012 (2) Him. L.R.(FB) 580 (majority view) will also be advantageous on this aspect of the matter.

26. In case titled as Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh reported in 2013 (136) FLR 893 (SC), it was held by the Hon'ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas his services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though

the compensation awarded by the Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs.1 lakh along-with interest @ 9% per annum had been awarded. Recently, in case titled as Deputy Executive Engineer vs. Kuberbhai Kanjibhai 2019 (160) FLR 651, by relying upon the cases of Bharat Sanchar Nigam Limited vs. Bhurumal (2014) 7 SCC 177 and District Development Officer & another vs. Satish Kantilal Amerelia 2018 (156) FLR 266 (SC), it has been held by the Hon'ble Supreme Court that where the workman had worked as a daily wager or muster roll employee hardly for a few years and where the dispute had been raised by him almost after 15 years of his alleged termination, he was held entitled only for lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and other consequential benefits. Similarly, in case titled as State of Uttarakhand & Anr. vs. Raj Kumar, 2019 (160) FLR 791, the Hon'ble Supreme Court has held that where a daily wager has worked for about a year and a dispute was raised by him after 25 years of the alleged termination, he had no right to claim regularization and was only entitled to lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and consequential benefits. In the case on hand before this Court, the factors which have weighed are that the petitioner in all remained engaged for about one year and actually worked for 294 days as per mandays chart on record and that his services were disengaged in July, 1996, who had worked as non- skilled worker and had raised the industrial dispute by issuance of demand notice after about more than **fifteen years** i.e. demand notice was given on 7-9-2011. Although, the petitioner has claimed that from time to time he had approached the respondent for being re-engaged, but in this regard there is no document placed on the file. At the risk of repetition, the petitioner on the date of filing the claim petition was aged 37 years and had a sufficient spell of life to work and earn his livelihood. Taking into consideration the factors mentioned above and the precedents laid down by the Hon'ble Supreme Court in the aforementioned cases, the petitioner is not entitled for reinstatement or for back wages, but only for a lump sum compensation.

27. In view of the discussion and findings arrived at by me above, a lump-sum compensation of 50,000/- (Rupees fifty thousand only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that the amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 6% per annum from date of Award till its realization. Issues No. 2 and 3 are answered and decided accordingly, while issue No.1 is decided against the respondent and in favour of the petitioner.

Issue No. 4 :

28. Not pressed.

Relief :

29. In the light of what has been discussed hereinabove while recording the findings on issues supra, the respondent is hereby directed to pay a compensation of ₹50,000/- (Rupees fifty thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay interest @ 6% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 26th day of March, 2021.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT MANDI)**

Ref. No. : 65/2013
Date of Institution : 27-7-2013
Date of Decision : 26-03-2021

Shri Murari Lal s/o Late Shri Brahma Ram, r/o Village Beena, P.O. Kalahod, Tehsil
Sunder Nagar, District Mandi, H.P. . *Petitioner.*

Versus

The Director, M/s Suket Hospital Pvt. Ltd. through its Directors, Near Lalit Chowk, Sunder
Nagar, District Mandi, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Bimal Sharma, Adv.
For the Respondent : Sh. Abhishek Lakhanpal, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Murari Lal s/o Late Sh. Brahma Ram (Pharmacist), r/o Village Beena, P.O. Kalahod, Tehsil Sunder Nagar, Distt. Mandi, H.P. during March, 2009 by the management/employer of M/s Suket Hospital Pvt. Ltd., Near Lalit Chowk, Sunder Nagar, Distt. Mandi, H.P. without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, salary, seniority, continuity in service, past service benefits and compensation the above workman is entitled to from the above management?”

2. In furtherance to the reference it is averred by the petitioner in the statement of claim that he is a diploma holder in pharmacy and is registered under the State Pharmacy Council of Himachal Pradesh *vide* registration No. 3979 dated 26-7-2002. After registration, the petitioner had applied for the post of pharmacist in the office of the respondent. He was appointed by the

respondent as a pharmacist on 14-2-2003 and had worked continuously. In the month of June, 2008, the petitioner had claimed for basic wages/salary of a pharmacist *w.e.f.* 14-2-2003 from the respondent. However, the respondent in the month of July, 2008 had re-designated the petitioner to the post of helper pharmacist without serving a notice under Section 9A of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). He had worked as a pharmacist continuously upto 7-3-2009. However, on 7-2-2009, the petitioner had fallen ill and could not join his duties upto 7-3-2009. He thereafter had submitted a medical certificate regarding his illness in the office of the respondent. But the respondent after destroying his medical record had not allowed him to join his duty. Without serving any notice under Section 25-F (b) of the Act, his services were unlawfully terminated on 9-3-2009. His last basic salary as well as the retrenchment compensation along-with other dues were not paid by the respondent. The respondent had appointed a new/fresh hand in his place. At the time of his appointment, the petitioner was being paid Rs. 1800/- per month and thereafter it was revised and fixed at Rs. 1900/-, Rs. 2200/- and Rs. 2500/-. At the time of his termination the respondent had enhanced his pay to the tune of Rs. 3280/- per month. However, he was entitled to the basic salary of Rs. 5910/- payable to a pharmacist *w.e.f.* January, 2006. The petitioner had filed a complaint before the Labour Inspector, Circle Sundernagar on 7-7-2008 against the respondent in this regard, but of no consequence. The respondent on 5-7-2011 in the case titled as President/G.S. Niji Hasptal Karamchhari Sangh *vs.* M/s Suket Hospital Pvt. Ltd. had accepted the demands of other employees except the disengagement of the petitioner and another. He then issued demand notice on dated 7-3-2009. State Government after the receipt of the failure report from the Conciliation Officer made the present reference to this Court. Since the petitioner has been appointed as a pharmacist by the department of Health and Family Welfare under Ragi Kalyan Samiti on a fixed amount, he is entitled for the arrears and basic salary of pharmacist *w.e.f.* 14-2-2003 upto 30-5-2013 with interest, which amounts to Rs. 2,00,000/-. Hence, it is prayed that the order of termination dated 9-3-2009, being illegal and unconstitutional be set aside and the petitioner be awarded the arrears to the tune of Rs. 2,00,000/- plus last salary and extra salary with interest.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability, that the petitioner is estopped to file the petition on account of his acts, deeds and acquiescence, that the petitioner has suppressed material facts and that the petitioner himself had willfully abandoned the job. The contents of the petition were denied on merits. However, it was asserted that the petitioner was appointed as a helper pharmacist purely on temporary basis on 14-2-2003. He had abandoned the work of his own sweet will *w.e.f.* 9-2-2009 and despite repeated reminders had not report back on duty. While under the employment of the respondent, the petitioner in a clandestine manner had remained in the whole time active employment of Satyam Medical Hall near Milk Plant Chakkar, District Mandi, H.P. *w.e.f.* 30-4-2005 to 29-4-2010. Despite repeated notices the petitioner had not filed his medical certificates, investigation reports and other concerned documents. Notices dated 9-3-2009, 22-5-2009, 22-6-2009, 10-7-2009, 18-7-2009 and 7-8-2009 were served upon the petitioner whereby he was repeatedly asked to report back on duty, but of no avail. On 6-10-2009 a notice was then issued to the petitioner informing him that his long absence from duty would be treated as abandonment of the job. The petitioner was being paid the basic salary as per the Minimum Wages Act. It was denied that he was entitled to the basic salary of a pharmacist *w.e.f.* January, 2006. The petitioner is himself guilty of professional misconduct. He has filed the claim totally different to the reference made by the appropriate Government. Hence, it is prayed that the petitioner be dismissed.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 25-2-2014:

1. Whether the termination of the services of the petitioner by the respondent during the month of March, 2009 is/was illegal and unjustified? . . .*OPP*.
2. Whether the petitioner has concealed the true and material facts from the Court as alleged? . . .*OPR*.
3. Whether the petitioner is estopped to file the present petition/claim by his act and conduct as alleged. If so, its effect? . . .*OPR*.
4. Whether the claim petition is not maintainable in the present form? . . .*OPR*.

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed.

7. Arguments of the learned counsel for the parties heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 : No

Issue No. 2 : Not pressed.

Issue No. 3 : No

Issue No. 4 : Yes

Relief. : Petition dismissed as per the operative portion of the Award

REASONS FOR FINDINGS

Issue No.1 :

9. The petitioner, namely, Shri Murari Lal examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim.

In the cross-examination, he admitted that he was appointed on 14-2-2003 in Suket Hospital. He also admitted that Ex.D-1 was issued to him. Volunteered that, he had not done the work. He feigned ignorance that the job of a pharmacist is a whole time job. These days he is in government service. He had fallen ill on 9-2-2009 and thereafter could not report back on duty till 7-3-2009. He clearly admitted that Ex.D-2 had been issued to him by the department. He denied that despite repeated letters he neither had filed the prescription slip nor his medical certificate etc. He also denied that during his employment, he had been working in Satyam Hospital. He admitted that he has been paid the salary from February, 2003 to February, 2009. He clearly denied that after February, 2009 he himself had abandoned the job. He does not want to work with the respondent, as he is in regular employment.

10. The petitioner through the statement of his counsel tendered in evidence documents Ex.PA to Ex.PJ and Mark-A, Mark-A1, Mark-A2 and Mark-B.

11. Conversely, Shri Amar Singh, Administrative Officer, Suket Hospital, Sundernagar, Mandi (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by the respondent.

In the cross-examination, he stated that as per the record the petitioner was engaged on 14-2-2003. He denied that they had appointed the petitioner as a pharmacist. He admitted that the petitioner had been marking his presence with them. The petitioner had worked with them till February, 2009. He specifically denied that till June, 2008 they had been taking the services of the petitioner as a pharmacist. He also denied that thereafter he was designated as helper pharmacist. He was not aware that the petitioner had remained ill till 7-3-2009. He denied that the petitioner had informed in this regard. He also denied that the petitioner had filed his medical certificate, but since 8-3-2009 he was not allowed to join the duty. No termination notice had been issued by them, as the petitioner had not turned up on work. No retrenchment compensation was paid by them to the petitioner. He admitted that Ramesh Kumar and Saroj Kumari had been working with them. Volunteered that, Ramesh Kumar was a pharmacist, while Saroj Kumari was a Drug Store Attendant. Ramesh Kumar had been kept in place of the petitioner. He denied that they had removed the petitioner from job on 8-3-2009 and that despite his services being taken as a pharmacist, he was not being given the pay of a pharmacist.

12. Ex. R-A is the copy of appointment letter relating to the petitioner.

13. Ex. R-B is the copy of letter dated 22-5-2009 regarding complaint made for non payment of minimum wages.

14. Ex. R-C to Ex. R-F are copies of letters dated 22-6-2009, 10-7-2009, 18-7-2009 & 7-8-2009 issued to the petitioner by the respondent.

15. Mark R-7 is the copy of letter dated 6-10-2008 pertaining to the petitioner.

16. The engagement of the petitioner by the respondent in Suket Hospital, Sundernagar on 14-2-2003 is not in dispute. The respondent as per the pleadings and ocular evidence clearly admitted that the petitioner had been engaged as a help pharmacist purely on temporary basis on 14-2-2003. It is an admitted fact of the parties that the petitioner had worked with the respondent upto 9-2-2009. The core question which comes to the fore for determination is whether the petitioner had been disengaged from service or he himself had abandoned the job, as it is claimed by the petitioner that he had been terminated by the respondent on 9-3-2009, whereas the stand taken by the respondent is that since 9-2-2009 the petitioner had remained absent from duty.

17. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. The burden of proving of abandonment is upon the respondent. There is statement of Shri Amar Singh Verma (RW1) alleging that the workman had abandoned the services *w.e.f.* 9-2-2009. The respondent has placed and exhibited on record photocopy of explanation letter dated 9th March, 2009 as Ex.D-2, whereby the petitioner had been asked to explain his absence from duty *w.e.f.* 9-2-2009 to 8-3-2009. The petitioner admitted the issuance of this document by the respondent. The other facts and circumstances appearing against the petitioner are that he was subsequently issued notices dated 22-6-2009, 10-7-2009, 18-7-2009 and 7-8-2009 as Ex.RC to Ex.RF respectively regarding his absence from duty and he being called upon to resume the duties. The petitioner admitted of having received the notice dated 22-5-2009. Although, he has denied the fact of having received the subsequent notices 18-7-2009 and 7-8-2009, it appears to me that after

having come to know that the same would go against him, he retracted from his statement regarding the receipt of letters Ex.RD to Ex.RF. To my mind, had he denied the receipt of explanation and all the letters, it would have had been a different matter. But, after admitting the receipt of the explanation letter as well as one of the notices, he could not deny the rest. At the sake of reiteration the letters Ex. RC to Ex. RF show that the respondent had time and again been asking the petitioner to explain his position regarding his absence from duty since 9th February, 2009 and to submit documents and also to report back on duty. There is nothing on the file to establish that the petitioner had ever replied the explanation letter (Ex.D-2) or the notices (Ex.RC to Ex.RF). The petitioner claimed that as he had remained ill *w.e.f.* 7.2.2009 till 7-3-2009, he could not report for duty. Though, the petitioner in his letter dated 12-6-2009 addressed to the respondent, copy of which is placed on record as Ex.PJ, claimed that he could not attend the duties *w.e.f.* 9-2-2009 to 7-3-2009 on account of his illness, but the fact remains that the petitioner has not cited and examined as a witness the doctor who had treated upon him. He is also not shown to have called for any record from the hospital where he had remained under treatment. He even did not examine any family member or person who ought to have attended upon him during the course of his illness, which as per his admitted case lasted for about one month. In Ex.PJ it has been claimed by the petitioner that on the 11th of March, 2009 he had submitted his joining letter along-with the medical certificate to Shri A.S. Verma (RW1), but his certificate was destroyed and he had been asked to leave with a threatening of dire consequences. Strangely enough, it was merely suggested to Shri Amar Singh Verma (RW1) that the petitioner had furnished the medical certificate. He denied the suggestion. It is by now well settled that denied suggestion does not amount to proof. It was nowhere suggested to this witness that the medical certificate had been destroyed and that he had been turned away with dire consequences. Then, it is not shown that the petitioner had ever moved any letter/notice asking the respondent to produce his joining letter dated 11-3-2009 before the Court. Even otherwise, if it is assumed for the sake of arguments that the medical certificate of the petitioner had been destroyed, he could have easily obtained and produce a duplicate medical certificate on record or could have called for the record in this regard from the issuing agency. But, so has not been done by the petitioner for reasons best known to him. This only shows that the aforesaid assertion of the petitioner in his letter (Ex.PJ) was false and baseless. As per the text and tenor of the letters/notices (Ex.RC to Ex.RF), the petitioner had been asked time and again to produce his medical record. At the cost of reiteration, the petitioner had not responded to any of those letters/notices. This shows that the plea of the petitioner that due to his illness he could not report back on duty is not tenable.

18. Accordingly, the petitioner is proved to be absent from attending the duties of his own. No record has been placed on the file by the petitioner showing that his services were terminated by the respondent of his own. Rather, the documents available on record show that the petitioner himself had absented from duties and thereafter had not reported for duty till date before the respondent. It is evident from the testimony of the petitioner that he is reluctant to join the duties and work with the respondent, as now he is in government service, working on contract basis. Had the petitioner responded to the explanation letter (Ex.D-2) and the letters/notices (Ex.RC to Ex.RF) and had tried to report back on duty, and had the respondent not allowed him to resume his duties, there would have been some merit in the case of the petitioner. But, as discussed above, the evidence on record proves that the petitioner himself had not reported back on duty. The petitioner had not tried to summon the Medical Officer or to call for the record of the hospital concerned to establish on record that he had remained ill for the period alleged by him in his pleadings. The self serving testimony of the petitioner regarding his illness cannot be taken as a gospel truth, particularly when no family member or any person, who ought to have attended upon him during the period of his illness, has been examined on record. Therefore, it cannot be said that the services of the petitioner had been terminated by the respondent. It has to be held that the petitioner himself had absented from duty of his own accord and no fault can be found with the respondent.

19. After going through the entire evidence on record, both ocular and documentary, it is my humble opinion that it cannot be said that the services of the petitioner were illegally terminated by the respondent. Rather, it is evident that the petitioner himself had absented from duty and thereafter had not reported back after the date of absence *i.e.* 9-2-2009.

20. The petitioner as per his pleadings and oral evidence has claimed arrears of basic pay of pharmacist *w.e.f.* 14-2-2003 upto 30-5-2013 along-with interest amounting to Rs. 2,00,000/- as well as last salary and an extra salary from the respondent. However, Section 10 (4) of the Act mandates that the Labour Court/Industrial Tribunal shall confine its adjudication to the points of dispute referred to it by the appropriate Government and the matters incidental thereto. The Hon'ble Supreme Court in case titled as Globe Ground India Employees Union vs. Lufthansa German Airlines and Anr., 2019 (161) FLR 927 has held that the Industrial Court has to confine its adjudication to the point of reference and matters incidental thereto only. No reference has been received from the appropriate Government regarding the alleged arrears. Therefore, the said controversy, if any, between the parties cannot be looked into by this Court being beyond the terms of the reference.

21. This issue is decided against the petitioner and in favour of the respondent.

Issue No. 2 :

22. Not pressed.

Issue No. 3 :

23. No evidence of estoppel has been led by the respondent. Hence, this issue is decided against the respondent and in favour of the petitioner.

Issue No. 4 :

24. Taking into account my findings on issue No. 1 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue. The claim petition is not maintainable in the present form. The same is frivolous and vexatious. The claim petition has been instituted by the petitioner with a malafide intention to derive undue advantage(s). This issue is decided in favour of the respondent and against the petitioner.

Relief :

25. As a sequel to my findings on the various issues above, the present claim petition being meritless, not maintainable and malafide, fails. It is, therefore, dismissed with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today this 26th day of March, 2021.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.
(Camp At Mandi).

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 592/2015

Date of Institution : 19-12-2015

Date of Decision : 31-03-2021

Shri Bharat Kumar s/o Shri Rattan Chand, r/o Village Sumna, P.O. Bassi, Tehsil Chachyot,
District Mandi, H.P. . *Petitioner.*

Versus

The Divisional Forest Officer, Nachan Forest Division at Gohar, District Mandi, H.P.
. *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. D.S. Katoch, Adv.

For the Respondent : Sh. Anil Sharma, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Bharat Kumar s/o Shri Rattan Chand, r/o Village Sumna, P.O. Bassi, Tehsil Chachyot, District Mandi, H.P. during year, 2010 to March, 2014 by the Divisional Forest Officer, Nachan Forest Division, at Gohar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner as set out in the statement of claim is that his services were engaged by the respondent on daily waged basis in Forest Division, Nachan at Gohar, District Mandi, H.P. in the year 2010 and that he had worked upto August, 2013 in Charyand Block and Nachan Range. Fictional/artificial breaks were given to him by the respondent/department despite availability of work and funds. His name was not mentioned in the seniority list. His services were finally terminated in the month of February, 2014 despite the fact that he (petitioner) had worked for 243 days in the year 2010, 269 days in the year 2011, 329 days in the year 2012, 156 days in the year 2013 and 29 days in the year 2014 respectively. Several requests were made by the petitioner to reinstate him, but the respondent had appointed one Smt. Kaushalya Devi in his place. He issued demand notice. State Government after the receipt of the failure report from the Conciliation Officer, made the above mentioned reference to this Court. Hence, the petitioner prays for his re-engagement along-with other consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objection regarding lack of maintainability. The contents of the petition were denied on merits. It was specifically denied that the services of the petitioner were illegally dispensed with by the

department in the year 2013. No fictional/artificial breaks had ever been given to the petitioner. He was engaged as a daily waged mazdoor in the month of April, 2010 and had worked intermittently upto June, 2013. Thereafter, he (petitioner) had left the work of his own sweet will. The petitioner had never worked with the department in the year 2011. It was denied that the petitioner had worked for 243 days in the year 2010, 269 days in 2011, 329 days in 2012, 156 days in 2013 and 29 days in 2014 respectively. The petitioner had been engaged for seasonal work *w.e.f.* April, 2010 and he had worked intermittently upto June, 2013. The question of his final termination in the year 2014 does not arise. As he had not completed 240 days in any calendar year, there was no violation of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). No junior to the petitioner has been retained by the respondent and that there was no violation of the provisions of Sections 25-G and 25-H of the Act. The petitioner is gainfully employed, being an agriculturist. Hence, it was prayed that the petition be dismissed.

4. While filing the rejoinder the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 30-5-2018:

1. Whether time to time termination of services of the petitioner by the respondent during year, 2010 to March, 2014 is/was illegal and unjustified as alleged? . . . *OPP.*
2. If issue No. 1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . . *OPP.*
3. Whether the petition is not maintainable in the present form as alleged? . . . *OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed.

7. Arguments of the learned counsel for the petitioner and the learned Deputy District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

- | | |
|-------------|--|
| Issue No. 1 | : Negative |
| Issue No. 2 | : Negative |
| Issue No. 3 | : Affirmative |
| Relief. | : Petition is dismissed per operative part of the Award. |

REASONS FOR FINDINGS

Issues No. 1 and 2 :

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Bharat Kumar examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit he reiterated the contents of his statement of claim. He also filed certain documents purportedly in support of his claim, which are exhibited as Ex. PW1/B1 to Ex. PW1/B11.

In the cross-examination, he denied that he had worked intermittently upto June, 2013 and thereafter had left the job of his own sweet will. He also denied that he had not worked with the department in the year 2011. Further, he denied that neither any fictional breaks were given to him nor the department had engaged or retained any junior to him. He specifically denied that he had not been terminated in April, 2014. He also denied that he had not worked for 240 days in any calendar year. It was also denied by him that he had been engaged for seasonal work in April, 2010. He denied that as seasonal work is done in the forest department, there is no work for the labour throughout the year. He owns 1- 1½ bighas of land, which he cultivates. He clearly denied that Kaushalya Devi had not been engaged in his place. He further denied that the budget is allocated to the department as per the seasonal work and rates.

11. Conversely, Shri T.R. Dhiman, Divisional Forest Officer, Nachan Forest Division at Gohar (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by the respondent.

In the cross-examination, he denied that the petitioner was engaged as a daily waged beldar in the Haliano Beat of Forest Division, Nachan in the year 2010 and that he had worked in Charyand Block and Nachan Range upto the year 2013. He also denied that despite work artificial breaks were given to the petitioner by the department and that in his place new workers had been kept. Further, he denied that the petitioner had worked in the department till February, 2014 and that thereafter his services had been dispensed with. He denied that the petitioner had illegally been terminated.

12. Ex. RW1/B is the copy of the mandays chart relating to the petitioner.

13. It is the admitted case of the parties that the services of the petitioner were engaged in the year 2010. Though, the respondent (RW1) in his examination-in-chief stated that the petitioner was employed as a seasonal worker but, however, he has not placed and exhibited on record any document evidencing that the services of the petitioner were engaged as a casual/seasonal worker for carrying out the seasonal forestry works only to his (petitioner's) knowledge.

14. The first and foremost point which comes to the fore for determination is whether the petitioner had been disengaged from service or he himself had abandoned the job?

15. It is well known that abandonment has to be proved by the employer like any other fact. Therefore, the burden of proving of abandonment is upon the respondent. It has been laid down by our own Hon'ble High Court in case titled as Narain Singh vs. The State of Himachal Pradesh & Ors., 2016 (3) Him L.R. 1875 that voluntarily abandonment of work by a workman is required to be established by way of cogent and reliable evidence by the employer. Similarly, in case titled as State of Himachal Pradesh & another vs. Shri Partap Singh, 2017 (1) Him L.R. 286, it has been held by our own Hon'ble High Court that abandonment is not to be lightly presumed, but it has to be unequivocally proved by the employer. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. Mere statement of Shri T.R. Dhiman, (RW1) alleging that the workman had abandoned the services is entirely insufficient to discharge the said onus. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. Absence from duty is a

serious misconduct and the principle of natural justice did require that some sort of a fact finding inquiry was got conducted by the respondent. In the present case as it emerges from the evidence on record, so was not done by the respondent. Then, 'animus' to abandon, it is well settled, must necessarily be shown to exist, before a case of abandonment can be said to have been made out. No evidence of any such 'animus' on the part of the petitioner is forthcoming in the present case. Thus, the plea of abandonment put forth by the respondent/employer is not established.

16. The version of the petitioner is that from the year of his initial engagement to the year 2013, artificial/fictional breaks in service were provided to him by the respondent. His services were wrongly and illegally terminated by the respondent in the year 2014.

17. While denying the said facts, the respondent has pleaded that the petitioner was only a casual/seasonal worker, who used to work intermittently as per his sweet will and convenience. No intentional breaks in service were provided to the petitioner at any point of time. His services were never finally terminated as alleged.

18. Firstly, I proceed to decide as to whether fictional breaks in service were given to the petitioner by the respondent as alleged?

19. Ex.RW1/B is the mandays chart relating to the petitioner. Its perusal discloses that the petitioner had worked under the respondent from the month of April, 2010 to June, 2013.

20. If intentional breaks in service were being provided to the petitioner by the respondent time and again as alleged, then why he (petitioner) did not agitate the said fact earlier or at the time of the receipt of the payments for the working days actually put in by him? Ex.RW1/B unfolds that the petitioner had worked with the respondent on bill basis for 74 days in the year 2010, only for 13 days in the year 2012 and for about 66 days in the year 2013. He had not worked for a single day in the year 2011. A person not working for a single day or for less than 100 days in the whole year cannot be permitted to countenance that artificial/fictional breaks were provided to him by the respondent/department wrongly and illegally. The fact that the petitioner had remained tight lipped and complacent about his rights for about three years and had been receiving the payments without any protests speaks volumes about the truthfulness and veracity of his claim. To my mind, a false plea of intentional breaks has been put forth by the petitioner so as to derive the benefits of regular employee with a malafide intention and ulterior motive. No artificial/fictional breaks were given to the petitioner by the respondent during the course of his employment.

21. Now about the alleged final termination of the services of the petitioner in the year 2014, as claimed.

22. The petitioner as per his pleadings and oral evidence has claimed that his services were finally terminated by the respondent in the month of February, 2014. However, Section 10 (4) of the Act mandates that the Labour Court/Industrial Tribunal shall confine its adjudication to the points of dispute referred to it by the appropriate Government and the matters incidental thereto. The Hon'ble Supreme Court in case titled as Globe Ground India Employees Union vs. Lufthansa German Airlines and Anr., 2019 (161) FLR 927 has held that the Industrial Court has to confine its adjudication to the point of reference and matters incidental thereto only. No reference has been received from the appropriate Government regarding the alleged final termination of the services of the petitioner in the month of February, 2014. Rather, as per the reference received from the appropriate Government, time to time termination of the services of the petitioner is alleged to be during the period from the year 2010 upto March, 2014. The claim of the petitioner regarding his time to time termination has already been negated by me above. However, looking to the statement of claim and the sworn testimony of the petitioner, it is apparent that he has claimed that his

services had been finally terminated by the respondent in the month of February, 2014. Such pleadings and evidence of the petitioner cannot be looked into by this Court, being beyond the terms of the reference. Even otherwise, it is evident from Ex.RW1/B, the detail of work done by the petitioner on bill basis, that he had not worked with the respondent/department in the year 2014. He is only shown to have worked with the respondent till the month of June, 2013. Therefore, I am at a loss to understand as to how it lies in his mouth to say that his services were disengaged by the respondent in the month of February, 2014 in a wrongful manner. In view of these facts, it can easily be said that the petitioner is not speaking the truth. His services were never finally terminated by the respondent in the month of February, 2014, as alleged. As no retrenchment order was passed by the respondent in the month of February, 2014, it cannot be said that the termination/retrenchment order is illegal and unjustified, as claimed.

23. Such being the situation, I have no hesitation to conclude that artificial/fictional breaks were not provided to the petitioner and that his services were not finally terminated by the respondent in the month of February, 2014. He is not entitled to any relief.

24. Issues No.1 and 2 are accordingly answered in the negative and decided against the petitioner.

Issue No. 3 :

25. Taking into account my findings on issues No. 1 to 2 above, it is held that the instant claim petition is not maintainable in the present form.

26. This issue is answered in the affirmative and in favour of the respondent.

Relief :

27. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 31st day of March, 2021.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 28/2017
Date of Institution : 07-1-2017
Date of Decision : 31-3-2021

Shri Dalip Singh s/o Shri Ishwar Dass, r/o Village Tanda Rajpur, P.O. Rajpur, Tehsil Palampur, District Kangra, H.P. . *Petitioner.*

Versus

1. The Vice Chancellor, Chaudhry Sarwan Kumar Himachal Pradesh Krishi Vishav Vidhaylya, Palampur, District Kangra, H.P.
2. The Registrar, Chaudhry Sarwan Kumar Himachal Pradesh Krishi Vishav Vidhaylya, Palampur, District Kangra, H.P. . *Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR

For the respondents : Smt. Rajni Katoch, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether the verbal termination of services of Shri Dalip Singh s/o Shri Ishwar Dass, r/o Village Tanda Rajpur, P.O. Rajpur, Tehsil Palampur, District Kangra, H.P. by (1) The Vice Chancellor, Chaudhry Sarwan Kumar, Himachal Pradesh Krishi Vishva Vidyalya, Palampur, District Kangra, H.P. (2) The Registrar, Chaudhry Sarwan Kumar, Himachal Pradesh Krishi Vishva Vidyalya, Palampur, District Kangra, H.P. during year, 2010 without serving notice, without holding enquiry and without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, to what back wages, service benefits and relief the above named daily wages worker is entitled to from the above employers?”

2. In furtherance to the reference it is averred by the petitioner in the statement of claim that the services of the petitioner were engaged by the respondents as a daily waged worker on daily rated basis in Organic Farm department *w.e.f.* April, 2006 and he continued to work as such upto 01-4-2010 without any breaks. During the aforesaid period the petitioner had worked under the head of the department, his attendance was being marked by field assistant/supervisor, regular employees of the respondents. The payment was made to the petitioner through head of the department of Tea Husbandry department. The act and conduct of the petitioner was satisfactory. During the aforesaid period, no show cause notice had ever been issued to him by the respondents. No appointment letter, identity card, casual/attendance card or wages slip were issued to him at the time of his appointment by the department. In the year 2008 H.P. Krishi Vishvavidyalaya Mazdoor Sangh had served a demand notice upon the respondents, raising various demands. The meeting was held on 4-4-2009, which was presided over by the Vice Chancellor. Meeting was also held with the representatives of the union on 18-6-2009, but the respondents had not discussed the demands of the workmen. On 25th March, 2010, the HOD/Director Research had verbally asked the petitioner and other co-workmen of the Live Stock Farm department to join the rolls of the contractor, namely Sahayta Security Services Pvt. Ltd. The petitioner alongwith others had not filed the application when verbal instructions were issued not to allow him and the others to join the services. The services of the petitioner and other co-workmen were unlawfully terminated by the respondents in the year 2010. No show cause notice, charge-sheet had ever been issued to the

petitioner, nor any inquiry had been conducted against him. No one month salary in lieu of notice period and retrenchment compensation had been paid. The petitioner had worked continuously and had completed 240 days in each calendar year *w.e.f.* the year 2006 upto the year 2010. The petitioner was also a member of the union and reference had been made to this court vide Reference No.207/2010. During the pendency of this reference, services of the petitioner and about 200 workmen were terminated in different departments. An application under Section 33-A of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) had been filed. However, on 14-7-2011 the Director of Research had offered appointment to the retrenched workers to join the duties in the rolls of the contractor subject to final disposal of the reference No.207/2010. It was accepted by the President of the union and application No. 25/2010 was withdrawn by the union. Reference No.207/2010 was also withdrawn by the union on technical grounds on 20-3-2014. After termination of the services of the petitioner, he had raised a dispute in individual capacity against the respondents under Section 2-A of the Act. Conciliation proceedings took place before the Labour-cum-Conciliation Officer, Dharamshala, but failed. A failure report under Section 12(4) of the Act had been forwarded to the Labour Commissioner for making a reference. The dispute was then forwarded by the appropriate Government to this Court. In the year 2010-2011 services of M/s Sahayta Security Services had been engaged by the respondents *vide* an agreement. On the expiry of the contract, new contractor, namely, M/s Sun Security Services Pvt. Ltd. was appointed in the year 2011-2012. On 14-7-2011, the petitioner had joined the services and had worked continuously upto 31-3-2012. After the termination of the contract of M/s Sahayta Security Services, the respondents had adjusted the petitioner alongwith the other workmen in the rolls of new contractor M/s. Sun Security Services Pvt. Ltd. and had worked upto 31-3-2013 continuously. The contract agreement of M/s. Sun Security Services Pvt. Ltd. had been terminated by the respondents *w.e.f.* 31-3-2013 and from 1-4-2013 a new contractor, namely, M/s Nu Vision Shimla was appointed, who is presently working with the respondents. The workmen who were engaged in the rolls of M/s. Sun Security Services Pvt. Ltd. were again adjusted in the rolls of new contractor, M/s. Nu Vision, Shimla. During his services, the petitioner had worked under the supervision and control of project investigator, and he had only been making payment to the petitioner from the year 2007 to 31-3-2010. Thereafter, when the petitioner had worked in the rolls of contractor, namely, M/s Sun Security Services and M/s Nu Vision, Shimla his attendance was marked by the Field Assistant of Fodder department from 18-7-2011 upto 11-6-2014. Payment was made by the respondents to the contractor on the basis of attendance records of its Field Assistant. As per the statute persons could not be employed on daily rated basis or on contract basis. The services of Smt. Promila Devi had been engaged as a worker without any appointment letter for 89 days *w.e.f.* 22-1-2000 on contract basis and her services have been regularized as a clerk by the respondents since 2010. As and when the respondents had engaged the contractor, namely, M/s Sahayta Securities Services Pvt. Ltd. had not moved an application for registration of the establishment under Section 7 of the Contract Labour (Regulation & Abolition) Act, 1970. M/s Sahayata Security Services Pvt. Ltd. had also not applied for a licence to Licensing Authority under Section 12(1) of the Act. Without complying with the provisions, no principal employer could engage a contract labourer. Workmen whose services had been engaged by the respondents without any appointment letter had worked for various operations in the field work of university. They had been discharging the same work and nature of duties as those of regular employees of the university. They have been paid minimum wages as fixed by the State Government/Labour Department but the service conditions of the petitioner had been changed by the respondents from time to time without making any application. The act and conduct of the respondents was highly unjustified, arbitrary, contrary, unconstitutional and against the mandatory provisions of the Act. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondents appeared. They filed a joint reply taking preliminary objections regarding lack of maintainability, locus standi, jurisdiction, that the petitioner had never worked as a daily paid labourer with the respondents and that the petitioner had not approached the

Court with clean hands and had suppressed the material facts. The contents of the petition were denied on merits. It was asserted that as per policy of the Government of H.P. of Finance Department *vide* order No. FIN.1-C(14)- 1/83 dated 8-7-1998, the policy/system to engage the worker on muster roll basis stood banned. The petitioner was never engaged as a daily paid labourer on muster roll basis. He was engaged on work contract basis from the year 2006 upto the year 2009, for which he had been raising bills for the work performed and had been paid at the rate not below the Government rate by the Project Investigators of the Project/HOD. His wages were paid from the funds of the project funded by ICAR/GOI and no wages had ever been paid to him from the Grant-in-Aid of the university. Had the petitioner been engaged as a daily paid labourer on muster roll basis, his name would have figured in the seniority lists of daily paid labourers of the university circulated in 2006 and 2008. The activities carried out by the respondents are purely of scientific research nature and do not have a motive of gain or profit. The petitioner had never worked against any sanctioned post in the university. The tender to outsource the workers was floated by the department of Soil Science of the respondents university and tender of M/s. Sahayata Security Services was approved. The services of the labourers/workers were outsourced to the said agency. Prior to it work was got done from unregistered contractors. It is specifically denied that the petitioner had never been allowed to enter the premises of the department by the HOD and his services had been unlawfully terminated. The worker had not turned to seek work from the respondents university at his own will. He had worked as a contractor from the year 2006 upto the year 2009. He raised various bills from time to time. The head of department had not violated any of the provisions of the Act. The petitioner did not come to attend his work at his own, as he was not interested to work as a labourer. The Director of Research of the respondents had not offered any appointment to any of the workers. Reference No. 207/2010 was dismissed as withdrawn. It had been instituted by using false registration number, which had been issued to Himachal Pradesh Krishi Vishwavidyalaya Dhiadidar Mazdoor Sangh. Registered contractors, namely, M/s. Sahayata Security Services, M/s. Sun Securities Services Pvt. Ltd. and M/s. Nuvision had been hired by the university for outsourcing of labour for various works related with research and scientific purposes. The deployment had been made for seasonal work, as per the requirement of the work. The petitioner had been deployed in various *ad hoc* projects as per the requirement of the project work. From the year 2006 upto the year 2009 the petitioner had raised bills as a contractor. The HOD concerned used to verify the work done, monthly attendance and wages bill raised by the Contractor/individual concerned, to see that excess payments were not made. The petitioner had been paid from recurring contingencies sub head and on the termination of one project, he had worked in other similar projects from time to time. He is not a regular employee of the university. It is admitted that Smt. Promila Devi had initially been appointed as a Data Entry Operator on contractual basis and that her services were regularized as per the policy of the Government of Himachal Pradesh to regularize contract appointees. The case of the petitioner has no direct connection/resemblance with that of Smt. Promila Devi. The respondents had got themselves registered with the competent authority and M/s. Sahayata Security was having a registration license. In the absence of regular staff, the manpower is being outsourced through the approved registered contractor to carry out field operations and in lieu of the services of outsourced, the payment is made to the contractor at the rate of minimum wages fixed by the State Government with respect to each category of workers. The petitioner is not entitled to salary and benefits at par with regular employees. The respondents, thus, pray for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 24-6-2019:

1. Whether the verbal termination of the services of the petitioner by the respondents during the year, 2010 is/was illegal and unjustified as alleged? . . .OPP.

2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? . . .*OPP*.
3. Whether the claim petition is not maintainable, as alleged? . . .*OPR*.
4. Whether the petitioner has no locus standi and cause of action to file the present case, as alleged? . . .*OPR*.
5. Whether this Court has no jurisdiction to try the present case, as alleged? . . .*OPR*.
6. Whether the petitioner is/was not daily paid labourer of the respondents, as alleged? . . .*OPR*.
7. Whether the petitioner has not approached the Court with clean hands and has suppressed true and material facts from this Court, as alleged? . . .*OPR*.

Relief.

6. Thereafter, the parties to the list were directed to adduce evidence in support of the issues so framed. No evidence was led by the petitioner and his evidence stood closed under the orders of the Court, as despite being afforded ample and last opportunities, he had failed to lead his evidence. Since, no evidence was led on record by the petitioner, the learned counsel for the respondents, as per her statement separately recorded and placed on the file, did not want to lead any evidence on behalf of the respondents.

7. Arguments of the learned Authorized Representative for the petitioner as well as the learned counsel for the respondents heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1	: No
Issue No. 2	: No
Issue No. 3	: Yes
Issue No. 4	: Yes
Issue No. 5	: Not pressed
Issue No. 6	: Yes
Issue No. 7	: Yes
Relief	: Claim petition dismissed vide operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1, 2 and 6 :

9. Being interlinked and to avoid repetition, all these issues are taken up together for discussion and disposal.

10. The statement of claim has been filed by the petitioner claiming that he was engaged as a daily waged worker by the respondents in the month of April, 2006 and had continuously worked as such till 01-4-2010. A plea was also taken to the effect by the petitioner that his services were illegally and unlawfully terminated by the respondents in the year 2010, without adhering to the principles of the Act. These averments were required to be established on record by the petitioner by way of ocular and/or documentary evidence, as the same were refuted by the respondents.

11. The first question which arises for consideration, as per the arguments, is whether the petitioner was an employee of respondents or not. It is by now well settled that the burden of proof is on the workman to establish the employer-employee relationship. In Workmen of Nilgiri Coop. Maktg. Soc. Ltd. vs. State of Tamil Nadu, (2004) 3 SCC 514, it has been laid down by the Hon'ble Supreme Court that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

12. At the risk of repetition, as in the case on hand it is asserted by the petitioner that he was a workman of the respondents, being appointed on daily waged basis and which fact had been denied by the respondents, therefore, in view of the aforesaid binding precedent, the onus lay on the petitioner to prove the employer-employee relationship in between himself and the respondents. Neither any oral nor documentary evidence has been led on record by the petitioner to show that he was appointed as a daily waged worker by the respondents. Had it been that the petitioner was a daily paid worker of the respondents, he ought to have been engaged on the muster rolls. No muster roll in his name has been placed and exhibited on record by the petitioner. This only goes to show that he had never been engaged on the muster roll.

13. It was also claimed in the statement of claim by the petitioner that he had worked continuously with the respondents from the year 2006 upto the year 2010, without any breaks and as such had been completing 240 days in each calendar year.

14. Section 25-B of the Act defines "continuous service". In terms of Sub Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. The burden of proof is on the petitioner to show that he had worked for 240 days in preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In R.M. Yellatty vs. Assistant Executive Engineer, (2006) 1 SCC 106, it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

15. Applying the principles laid down in the above case by the Hon'ble Supreme Court, it was required of the petitioner to establish on record that he had worked continuously for a period 240 days in a block of twelve calendar months anterior to the date of his alleged termination, which as per the reference took place in the year 2010. No such record is there on the file to establish that the petitioner had worked continuously for a period of 240 days in a block of twelve calendar months prior to the date of his alleged termination, as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

16. It is not the case of the petitioner that after his alleged disengagement, his juniors had been retained and that new/fresh hands had also been engaged by the respondents. That being so, the provisions of Sections 25-G and 25-H of the Act are also not attracted in this case.

17. In view of the above, it can safely be concluded that the petitioner has not been able to show that he was engaged as a daily paid worker by the respondents. No muster roll has been filed nor any seniority list of daily wagers showing his name has been placed and exhibited on record by the petitioner. Therefore, the petitioner is not a daily paid worker. He is not entitled to any relief as claimed for by him. Hence, issues No.1 and 2 are decided against the petitioner, while issue No. 6 is decided in favour of the respondents.

Issues No. 3,4 & 7 :

18. Taking in to account my findings on issues No. 1, 2 and 6 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue. The claim petition is not maintainable in the present form. The petitioner has not approached the Court with clean hands and has suppressed material facts. The claim petition is frivolous and vexatious. It has been instituted by the petitioner with a malafide intention to derive undue advantage(s). These issues are answered in favour of the respondents.

Issue No.5 :

19. Not pressed.

Relief :

20. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 31st day of March, 2021.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No.	: 34/2017
Date of Institution	: 07-1-2017
Date of Decision	: 31-3-2021

Shri Vinod Kumar s/o Shri Rattan Chand, r/o Village and Post Office Pahra, Tehsil Palampur, District Kangra, H.P. . *Petitioner.*

Versus

1. The Vice Chancellor, Chaudhry Sarwan Kumar Himachal Pradesh Krishi Vishav Vidhaylya, Palampur, District Kangra, H.P.
2. The Registrar, Chaudhry Sarwan Kumar Himachal Pradesh Krishi Vishav Vidhaylya, Palampur, District Kangra, H.P. . *Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR

For the respondents : Smt. Rajni Katoch, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether the verbal termination of services of Shri Vinod Kumar s/o Shri Rattan Chand, r/o Village and Post Office Pahra, Tehsil Palampur, District Kangra, H.P. by (1) The Vice Chancellor, Chaudhry Sarwan Kumar, Himachal Pradesh Krishi Vishva Vidyalya, Palampur, District Kangra, H.P. (2) The Registrar, Chaudhry Sarwan Kumar, Himachal Pradesh Krishi Vishva Vidyalya, Palampur, District Kangra, H.P. *w.e.f.* 01-09-2010 without serving notice, without holding enquiry and without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, to what back wages, service benefits and relief the above named daily wages worker is entitled to from the above employers?

2. In furtherance to the reference it is averred by the petitioner in the statement of claim that the services of the petitioner were engaged by the respondents as a daily waged worker on daily rated basis in Bio Technology department *w.e.f.* 15-1-2007 and he continued to work as such upto 01-9-2010 without any breaks. During the aforesaid period the petitioner had worked under the head of the department, his attendance was being marked by field assistant/supervisor, regular employees of the respondents. The payment was made to the petitioner through head of the department of Bio Technology department. The act and conduct of the petitioner was satisfactory. During the aforesaid period, no show cause notice had ever been issued to him by the respondents. No appointment letter, identity card, casual/attendance card or wages slip were issued to him at the time of his appointment by the department. In the year 2008 H.P. Krishi Vishvavidyalaya Mazdoor Sangh had served a demand notice upon the respondents, raising various demands. The meeting was held on 4-4-2009, which was presided over by the Vice Chancellor. Meeting was also held with the representatives of the union on 18-6-2009, but the respondents had not discussed the

demands of the workmen. On 25th March, 2010, the HOD/Director Research had verbally asked the petitioner and other co-workmen of the Live Stock Farm department to join the rolls of the contractor, namely Sahayta Security Services Pvt. Ltd. The petitioner alongwith others had not filed the application when verbal instructions were issued not to allow him and the others to join the services. The services of the petitioner and other co-workmen were unlawfully terminated by the respondents in the year 2010. No show cause notice, charge-sheet had ever been issued to the petitioner, nor any inquiry had been conducted against him. No one month salary in lieu of notice period and retrenchment compensation had been paid. The petitioner had worked continuously and had completed 240 days in each calendar year *w.e.f.* the year 2007 upto the year 2010. The petitioner was also a member of the union and reference had been made to this court vide Reference No.207/2010. During the pendency of this reference, services of the petitioner and about 200 workmen were terminated in different departments. An application under Section 33-A of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) had been filed. However, on 14-7-2011 the Director of Research had offered appointment to the retrenched workers to join the duties in the rolls of the contractor subject to final disposal of the reference No. 207/2010. It was accepted by the President of the union and application No. 25/2010 was withdrawn by the union. Reference No. 207/2010 was also withdrawn by the union on technical grounds on 20-3-2014. After termination of the services of the petitioner, he had raised a dispute in individual capacity against the respondents under Section 2-A of the Act. Conciliation proceedings took place before the Labour-cum-Conciliation Officer, Dharamshala, but failed. A failure report under Section 12(4) of the Act had been forwarded to the Labour Commissioner for making a reference. The dispute was then forwarded by the appropriate Government to this Court. In the year 2010-2011 services of M/s Sahayta Security Services had been engaged by the respondents *vide* an agreement. On the expiry of the contract, new contractor, namely, M/s Sun Security Services Pvt. Ltd. was appointed in the year 2011-2012. On 14-7-2011, the petitioner had joined the services and had worked continuously upto 31-3-2012. After the termination of the contract of M/s Sahayta Security Services, the respondents had adjusted the petitioner alongwith the other workmen in the rolls of new contractor M/s. Sun Security Services Pvt. Ltd. and had worked upto 31-3-2013 continuously. The contract agreement of M/s. Sun Security Services Pvt. Ltd. had been terminated by the respondents *w.e.f.* 31-3-2013 and from 1-4-2013 a new contractor, namely, M/s Nu Vision Shimla was appointed, who is presently working with the respondents. The workmen who were engaged in the rolls of M/s. Sun Security Services Pvt. Ltd. were again adjusted in the rolls of new contractor, M/s. Nu Vision, Shimla. During his services, the petitioner had worked under the supervision and control of project investigator, and he had only been making payment to the petitioner from the year 2007 to 31-3-2010. Thereafter, when the petitioner had worked in the rolls of contractor, namely, M/s Sun Security Services and M/s Nu Vision, Shimla his attendance was marked by the Field Assistant of Fodder department from 18-7-2011 upto 11-6-2014. Payment was made by the respondents to the contractor on the basis of attendance records of its Field Assistant. As per the statute persons could not be employed on daily rated basis or on contract basis. The services of Smt. Promila Devi had been engaged as a worker without any appointment letter for 89 days *w.e.f.* 22-1-2000 on contract basis and her services have been regularized as a clerk by the respondents since 2010. As and when the respondents had engaged the contractor, namely, M/s Sahayta Securities Services Pvt. Ltd. had not moved an application for registration of the establishment under Section 7 of the Contract Labour (Regulation & Abolition) Act, 1970. M/s Sahayata Security Services Pvt. Ltd. had also not applied for a licence to Licensing Authority under Section 12(1) of the Act. Without complying with the provisions, no principal employer could engage a contract labourer. Workmen whose services had been engaged by the respondents without any appointment letter had worked for various operations in the field work of university. They had been discharging the same work and nature of duties as those of regular employees of the university. They have been paid minimum wages as fixed by the State Government/Labour Department but the service conditions of the petitioner had been changed by the respondents from time to time without making any application. The act and conduct of the respondents was highly

unjustified, arbitrary, contrary, unconstitutional and against the mandatory provisions of the Act. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondents appeared. They filed a joint reply taking preliminary objections regarding lack of maintainability, locus standi, jurisdiction, that the petitioner had never worked as a daily paid labourer with the respondents and that the petitioner had not approached the Court with clean hands and had suppressed the material facts. The contents of the petition were denied on merits. It was asserted that as per policy of the Government of H.P. of Finance Department *vide* order No. FIN.1-C(14)- 1/83 dated 8-7-1998, the policy/system to engage the worker on muster roll basis stood banned. The petitioner was never engaged as a daily paid labourer on muster roll basis. He was engaged on work contract basis from the year 2008 uptil the year 2010, for which he had been raising bills for the work performed and had been paid at the rate not below the Government rate by the Project Investigators of the Project/HOD. His wages were paid from the funds of the project funded by ICAR/GOI and no wages had ever been paid to him from the Grant-in-Aid of the university. Had the petitioner been engaged as a daily paid labourer on muster roll basis, his name would have figured in the seniority lists of daily paid labourers of the university circulated in 2006 and 2008. The activities carried out by the respondents are purely of scientific research nature and do not have a motive of gain or profit. The petitioner had never worked against any sanctioned post in the university. The tender to outsource the workers was floated by the department of Soil Science of the respondents university and tender of M/s. Sahayata Security Services was approved. The services of the labourers/workers were outsourced to the said agency. Prior to it work was got done from unregistered contractors. It is specifically denied that the petitioner had never been allowed to enter the premises of the department by the HOD and his services had been unlawfully terminated. The worker had not turned to seek work from the respondents university at his own will. He had worked as a contractor from the year 2008 uptil the year 2010. He raised various bills from time to time. The head of department had not violated any provisions of the Act. The petitioner did not come to attend his work at his own, as he was not interested to work as a labourer. The Director of Research of the respondents had not offered any appointment to any of the workers. Reference No.207/2010 was dismissed as withdrawn. It had been instituted by using false registration number, which had been issued to Himachal Pradesh Krishi Vishvavidyalaya Dhiadidar Mazdoor Sangh. Registered contractors, namely, M/s. Sahayata Security Services, M/s. Sun Securities Services Pvt. Ltd. and M/s. Nuvision had been hired by the university for outsourcing of labour for various works related with research and scientific purposes. The deployment had been made for seasonal work, as per the requirement of the work. The petitioner had been deployed in various *ad hoc* projects as per the requirement of the project work. From the year 2006 uptil the year 2009 the petitioner had raised bills as a contractor. The HOD concerned used to verify the work done, monthly attendance and wages bill raised by the Contractor/individual concerned, to see that excess payments were not made. The petitioner had been paid from recurring contingencies sub head and on the termination of one project, he had worked in other similar projects from time to time. He is not a regular employee of the university. It is admitted that Smt. Promila Devi had initially been appointed as a Data Entry Operator on contractual basis and that her services were regularized as per the policy of the Government of Himachal Pradesh to regularize contract appointees. The case of the petitioner has no direct connection/resemblance with that of Smt. Promila Devi. The respondents had got themselves registered with the competent authority and M/s. Sahayata Security was having a registration license. In the absence of regular staff, the manpower is being outsourced through the approved registered contractor to carry out field operations and in lieu of the services of outsourced, the payment is made to the contractor at the rate of minimum wages fixed by the State Government with respect to each category of workers. The petitioner is not entitled to salary and benefits at par with regular employees. The respondents, thus, pray for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 24-6-2019:

1. Whether the verbal termination of the services of the petitioner by the respondents *w.e.f.* 01-09-2010 is/was illegal and unjustified as alleged? . . .*OPR.*
2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? . . .*OPR.*
3. Whether the claim petition is not maintainable, as alleged? . . .*OPR.*
4. Whether the petitioner has no locus standi and cause of action to file the present case, as alleged? . . .*OPR.*
5. Whether this Court has no jurisdiction to try the present case, as alleged? . . .*OPR.*
6. Whether the petitioner is/was not daily paid labourer of the respondents, as alleged? . . .*OPR.*
7. Whether the petitioner has not approached the Court with clean hands and has suppressed true and material facts from this Court, as alleged? . . .*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. No evidence was led by the petitioner and his evidence stood closed under the orders of the Court, as despite being afforded ample and last opportunities, he had failed to lead his evidence. Since, no evidence was led on record by the petitioner, the learned counsel for the respondents, as per her statement separately recorded and placed on the file, did not want to lead any evidence on behalf of the respondents.

7. Arguments of the learned Authorized Representative for the petitioner as well as the learned counsel for the respondents heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1	: No
Issue No. 2	: No
Issue No. 3	: Yes
Issue No. 4	: Yes
Issue No. 5	: Not pressed
Issue No. 6	: Yes
Issue No. 7	: Yes
Relief	: Claim petition dismissed vide operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1, 2 and 6 :

9. Being interlinked and to avoid repetition, all these issues are taken up together for discussion and disposal.

10. The statement of claim has been filed by the petitioner claiming that he was engaged as a daily waged worker by the respondents *w.e.f.* 15.01.2007 and had continuously worked as such till 01-9-2010. A plea was also taken to the effect by the petitioner that his services were illegally and unlawfully terminated by the respondents in the year 2010, without adhering to the principles of the Act. These averments were required to be established on record by the petitioner by way of ocular and/or documentary evidence, as the same were refuted by the respondents.

11. The first question which arises for consideration, as per the arguments, is whether the petitioner was an employee of respondents or not. It is by now well settled that the burden of proof is on the workman to establish the employer-employee relationship. In Workmen of Nilgiri Coop. Maktg. Soc. Ltd. vs. State of Tamil Nadu, (2004) 3 SCC 514, it has been laid down by the Hon'ble Supreme Court that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

12. At the risk of repetition, as in the case on hand it is asserted by the petitioner that he was a workman of the respondents, being appointed on daily waged basis and which fact had been denied by the respondents, therefore, in view of the aforesaid binding precedent, the onus lay on the petitioner to prove the employer-employee relationship in between himself and the respondents. Neither any oral nor documentary evidence has been led on record by the petitioner to show that he was appointed as a daily waged worker by the respondents. Had it been that the petitioner was a daily paid worker of the respondents, he ought to have been engaged on the muster rolls. No muster roll in his name has been placed and exhibited on record by the petitioner. This only goes to show that he had never been engaged on the muster roll.

13. It was also claimed in the statement of claim by the petitioner that he had worked continuously with the respondents from the year 2007 upto the year 2010, without any breaks and as such had been completing 240 days in each calendar year.

14. Section 25-B of the Act defines "continuous service". In terms of Sub Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. The burden of proof is on the petitioner to show that he had worked for 240 days in preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In R.M. Yellatty vs. Assistant Executive Engineer, (2006) 1 SCC 106, it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

15. Applying the principles laid down in the above case by the Hon'ble Supreme Court, it was required of the petitioner to establish on record that he had worked continuously for a period 240 days in a block of twelve calendar months anterior to the date of his alleged termination, which as per the reference took place in the year 2010. No such record is there on the file to establish that the petitioner had worked continuously for a period of 240 days in a block of twelve calendar

months prior to the date of his alleged termination, as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

16. It is not the case of the petitioner that after his alleged disengagement, his juniors had been retained and that new/fresh hands had also been engaged by the respondents. That being so, the provisions of Sections 25-G and 25-H of the Act are also not attracted in this case.

17. In view of the above, it can safely be concluded that the petitioner has not been able to show that he was engaged as a daily paid worker by the respondents. No muster roll has been filed nor any seniority list of daily wagers showing his name has been placed and exhibited on record by the petitioner. Therefore, the petitioner is not a daily paid worker. He is not entitled to any relief as claimed for by him. Hence, issues No.1 and 2 are decided against the petitioner, while issue No. 6 is decided in favour of the respondents.

Issues No. 3, 4 & 7 :

18. Taking in to account my findings on issues No. 1, 2 and 6 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue. The claim petition is not maintainable in the present form. The petitioner has not approached the Court with clean hands and has suppressed material facts. The claim petition is frivolous and vexatious. It has been instituted by the petitioner with a malafide intention to derive undue advantage(s). These issues are answered in favour of the respondents.

Issue No. 5 :

19. Not pressed.

Relief :

20. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 31st day of March, 2021.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial,
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 31/2017

Date of Institution : 07-1-2017

Date of Decision

: 31-3-2021

Shri Rohit s/o Shri Ram Saroop, r/o Village and Post Office Thandol, Tehsil Palampur, District Kangra, H.P. .Petitioner.

Versus

1. The Vice Chancellor, Chaudhry Sarwan Kumar Himachal Pradesh Krishi Vishav Vidhaylya, Palampur, District Kangra, H.P.

2. The Registrar, Chaudhry Sarwan Kumar Himachal Pradesh Krishi Vishav Vidhaylya, Palampur, District Kangra, H.P. .Respondents.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR

For the respondents : Smt. Rajni Katoch, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether the verbal termination of services of Shri Rohit s/o Shri Ram Saroop, r/o Village and Post Office Thandol, Tehsil Palampur, District Kangra, H.P. by (1) The Vice Chancellor, Chaudhry Sarwan Kumar, Himachal Pradesh Krishi Vishva Vidyalya, Palampur, District Kangra, H.P. (2) The Registrar, Chaudhry Sarwan Kumar, Himachal Pradesh Krishi Vishva Vidyalya, Palampur, District Kangra, H.P. *w.e.f.* 01-04-2010 without serving notice, without holding enquiry and without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, to what back wages, service benefits and relief the above named daily wages worker is entitled to from the above employers?”

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that the services of the petitioner were engaged by the respondents as a daily waged worker on daily rated basis in Tea Husbandry department in the year 2008 and he continued to work as such upto 1-4-2010 without any breaks. During the aforesaid period the petitioner had worked under the head of the department, his attendance was being marked by field assistant/supervisor, regular employees of the respondents. The payment was made to the petitioner through head of the department of Tea Husbandry department. The act and conduct of the petitioner was satisfactory. During the aforesaid period, no show cause notice had ever been issued to him by the respondents. No appointment letter, identity card, casual/attendance card or wages slip were issued to him at the time of his appointment by the department. In the year 2008 H.P. Krishi Vishvavidyalaya Mazdoor Sangh had served a demand notice upon the respondents, raising various demands. The meeting was held on 4-4-2009, which was presided over by the Vice Chancellor. Meeting was also held with the representatives of the union on 18-6-2009, but the respondents had not discussed the demands of the workmen. On 25th March, 2010, the HOD/Director Research had verbally asked the petitioner and other co-workmen of the Live Stock Farm department to join the rolls of the contractor, namely Sahayta Security Services Pvt. Ltd. The petitioner alongwith others had not filed the application when verbal instructions were issued not to allow him and the others to join the services. The services of the petitioner and other co-workmen were unlawfully terminated by the

respondents in the year 2010. No show cause notice, charge-sheet had ever been issued to the petitioner, nor any inquiry had been conducted against him. No one month salary in lieu of notice period and retrenchment compensation had been paid. The petitioner had worked continuously and had completed 240 days in each calendar year *w.e.f.* the year 2008 upto the year 2010. The petitioner was also a member of the union and reference had been made to this court *vide* Reference No. 207/2010. During the pendency of this reference, services of the petitioner and about 200 workmen were terminated in different departments. An application under Section 33-A of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) had been filed. However, on 14-7-2011 the Director of Research had offered appointment to the retrenched workers to join the duties in the rolls of the contractor subject to final disposal of the reference No. 207/2010. It was accepted by the President of the union and application No. 25/2011 was withdrawn by the union. Reference No. 207/2010 was also withdrawn by the union on technical grounds on 20-3-2014. After termination of the services of the petitioner, he had raised a dispute in individual capacity against the respondents under Section 2-A of the Act. Conciliation proceedings took place before the Labour-cum-Conciliation Officer, Dharamshala, but failed. A failure report under Section 12(4) of the Act had been forwarded to the Labour Commissioner for making a reference. The dispute was then forwarded by the appropriate Government to this Court. In the year 2010-2011 services of M/s Sahayta Security Services had been engaged by the respondents *vide* an agreement. On the expiry of the contract, new contractor, namely, M/s Sun Security Services Pvt. Ltd. was appointed in the year 2011-2012. On 14-7-2011, the petitioner had joined the services and had worked continuously upto 31-3-2012. After the termination of the contract of M/s Sahayta Security Services, the respondents had adjusted the petitioner alongwith the other workmen in the rolls of new contractor M/s. Sun Security Services Pvt. Ltd. and had worked upto 31-3-2013 continuously. The contract agreement of M/s. Sun Security Services Pvt. Ltd. had been terminated by the respondents *w.e.f.* 31-3-2013 and from 1-4-2013 a new contractor, namely, M/s Nu Vision Shimla was appointed, who is presently working with the respondents. The workmen who were engaged in the rolls of M/s. Sun Security Services Pvt. Ltd. were again adjusted in the rolls of new contractor, M/s. Nu Vision, Shimla. During his services, the petitioner had worked in the control of project investigator and he had only been making payment to the petitioner from the year 2007 to 31-3-2010. Thereafter, when the petitioner had worked in the rolls of contractor, namely, M/s Sun Security Services and M/s Nu Vision, Shimla his attendance was marked by the Field Assistant of Fodder department from 18-7-2011 upto 11-6-2014. Payment was made by the respondents to the contractor on the basis of attendance records of its Field Assistant. As per the statute persons could not be employed on daily rated basis or on contract basis. The services of Smt. Promila Devi had been engaged as a worker without any appointment letter for 89 days *w.e.f.* 22-1-2000 on contract basis and her services have been regularized as a clerk by the respondents since 2010. As and when the respondents had engaged the contractor, namely, M/s Sahayta Securities Services Pvt. Ltd. had not moved an application for registration of the establishment under Section 7 of the Contract Labour (Regulation & Abolition) Act, 1970. M/s Sahayata Security Services Pvt. Ltd. had also not applied for a licence to Licensing Authority under Section 12(1) of the Act. Without complying with the provisions, no principal employer could engage a contract labourer. Workmen whose services had been engaged by the respondents without any appointment letter had worked for various operations in the field work of university. They had been discharging the same work and nature of duties as those of regular employees of the university. They have been paid minimum wages as fixed by the State Government/Labour Department but the service conditions of the petitioner had been changed by the respondents from time to time without making any application. The act and conduct of the respondents was highly unjustified, arbitrary, contrary, unconstitutional and against the mandatory provisions of the Act. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondents appeared. They filed a joint reply taking preliminary objections regarding lack of maintainability, locus standi, jurisdiction, that the petitioner had never

worked as a daily paid labourer with the respondents and that the petitioner had not approached the Court with clean hands and had suppressed the material facts. The contents of the petition were denied on merits. It was asserted that as per policy of the Government of H.P. of Finance Department *vide* order No. FIN.1-C(14)-1/83 dated 8-7-1998, the policy/system to engage the worker on muster roll basis stood banned. The petitioner was never engaged as a daily paid labourer on muster roll basis. His name does not figure in the seniority lists of daily paid workers of the university. It was asserted that as the petitioner had never worked as a daily paid worker from the year 2008 in the Department of Tea Husbandry, the question of issuing appointment letter to him did not arise. The demands of union had not been considered by the respondents on the grounds that the services of the workers had not been engaged as daily paid labourers on muster roll basis. The tender to outsource the services of the workers was floated by the Department of Soil Science of the university and the tender of M/s Sahayata Security Services was approved. The services of the labourers/workers were outsourced to the said agency. The Director of Research had not forced anyone to join/work under the agency. Since, the petitioner had never worked in the Department of Tea Husbandry during the year 2008, the HOD concerned had not violated any of the provisions of the Act. The Director of Research of the university had not offered any appointment to any of the workers. Reference No. 207/2010 was dismissed as withdrawn. It had been instituted by using false registration number, which had been issued to Himachal Pradesh Krishi Vishvavidyalaya Dhiadidar Mazdoor Sangh. Registered contractors, namely, M/s. Sahayata Security Services, M/s. Sun Securities Services Pvt. Ltd. and M/s. Nuvision had been hired by the university for outsourcing of labour for various works related to research and scientific purposes. The deployment had been made for seasonal works, as per the requirement of the work. It is admitted that Smt. Promila Devi had initially been appointed as a Data Entry Operator on contractual basis and that her services were regularized as per the policy of the Government of Himachal Pradesh to regularize contract appointees. The case of the petitioner has no direct connection/resemblance with that of Smt. Promila Devi. The respondents had got themselves registered with the competent authority and M/s. Sahayata Security was having a registration license. In the absence of regular staff, the manpower is being outsourced through the approved registered contractor to carry out field operations and in lieu of the services of outsourced, the payment is made to the contractor at the rate of minimum wages fixed by the State Government with respect to each category of workers. The petitioner is not entitled for salary and benefits at par with regular employees. The respondents, thus, pray for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 24-6-2019:

1. Whether the verbal termination of the services of the petitioner by the respondents *w.e.f.* 01-04-2010 is/was illegal and unjustified as alleged? . . .*OPP.*
2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable, as alleged? . . .*OPR.*
4. Whether the petitioner has no locus standi and cause of action to file the present case as alleged? . . .*OPR.*
5. Whether this Court has no jurisdiction to try the present case, as alleged? . . .*OPR.*
6. Whether the petitioner is/was not daily paid labourer of the respondents, as alleged? . . .*OPR.*

7. Whether the petitioner has not approached the Court with clean hands and has suppressed true and material facts from this Court, as alleged? . . . *OPR*.

Relief.

6. Thereafter, the parties to the list were directed to adduce evidence in support of the issues so framed.

7. Arguments of the learned Authorized representative for the petitioner as well as learned counsel for the respondents heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1	: Negative
Issue No. 2	: Negative
Issue No. 3	: Affirmative
Issue No. 4	: Affirmative
Issue No. 5	: Not pressed
Issue No. 6	: Affirmative
Issue No. 7	: Affirmative
Relief	: Claim petition dismissed vide operative portion of the Award.

REASONS FOR FINDINGS

Issues No.1, 2 and 6 :

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Rohit examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A.

In the cross-examination, he admitted that he has not filed any document showing him to be a daily wager. He also admitted that in the muster roll names of different categories of workers are mentioned. He further admitted that a tentative seniority list Ex. R1 was issued by the university. Further, he admitted that it does not bear his name. He also specifically admitted that his name also does not figure in the final seniority list, Ex.R-2. Though, he denied that he had not raised any objection regarding the seniority list and has volunteered to state that he had raised an objection with the VC, but he had to admit that no such document has been placed on record by him. It was also admitted by him that as per the policy of the Government, the persons who were engaged on muster rolls have been regularized. He clearly admitted that he has not applied for any sanctioned post in any department. He admitted that in the fields seasonal work is done. He was also categorical that he works in the fields as a beldar. These days he is working under the contractor in the university. He denied that he is making a phoney statement.

11. Conversely, Shri Dinesh Kumar Vatsa, Director of Research CSK, HPKV, Palampur, District Kangra, H.P. (respondent) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of reply filed by the respondents.

In the cross-examination, he denied that the petitioner was kept at work in the year 2008. Volunteered that, he had never worked with the respondents and thereafter stated that after the year 2010 the workers had been kept on outsource basis. Earlier to it workers had been kept through unregistered contractors. The department was not marking the presence of the petitioner, it was being marked by the unregistered contractor and the department would verify it. He admitted that the work was being allotted by the HOD to the petitioner. Bills of the workers were being produced by the contractor. He specifically denied that the services of the petitioner had been terminated by the university. He admitted that no mandays chart of the petitioner has been given by the department. Volunteered that, he was not a daily paid labourer, so the mandays chart was not being maintained. Seniority list of contractual casual workers is not being prepared. He clearly denied that from the year 2008 upto the year 2010, the petitioner had worked for 240 days in each year and that his mandays chart was not intentionally filed. He also denied that he was not competent to give evidence.

12. Ex.RW1/B is the copy of letter dated 8th July, 1998 regarding need for economy without impeding the pace of development-Economy instructions.

13. Ex.RW1/C is the copy of certificate of registration dated 29-1-2011 relating to M/s Sahayata Security Services.

14. The first question which arises for consideration, as per the arguments, is whether the petitioner was an employee of respondents or not. It is by now well settled that the burden of proof is on the workman to establish the employer-employee relationship. In Workmen of Nilgiri Coop. Maktg. Soc. Ltd. vs. State of Tamil Nadu, (2004) 3 SCC 514, it has been laid down by the Hon'ble Supreme Court that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

15. In the case on hand, it was asserted by the petitioner that he was a workman of the respondents, being appointed on daily wage basis. The respondents denied this fact and claimed that had he been engaged as a daily paid labourer on muster roll basis, his name ought to have figured in the seniority lists of daily paid labourers of the university circulated in the years 2006 and 2008. Therefore, in view of the aforesaid binding precedent, the onus lay on the petitioner to prove the employer- employee relationship in between himself and the respondents. No document has been placed and exhibited on record by the petitioner to show that he was appointed as a daily waged worker by the respondents. Rather, the respondents in the cross-examination of the petitioner itself have placed on record revised seniority list of daily paid workers in the university, as it stood on 31-3-2006 as Ex. R-1 and the seniority list of daily waged workers in the university, as it stood on 31-3-2008 as Ex.R-2. These documents are not in dispute by the petitioner. The name of the petitioner does not figure in them anywhere. While under cross-examination, the petitioner categorically admitted that his name did not find mention in these seniority lists. No reason has been assigned by him as to why his name does not figure in the seniority lists of daily paid workers maintained by the respondents. Although, he claimed that an objection had been raised before the Vice Chancellor, but his such self serving statement is in air, as no document regarding the raising of objection against the seniority lists has seen the light of the day. The petitioner clearly admitted

that he had not filed any such document on record. It is the case of the respondents that the seniority list contains the names of all the daily waged workers working with them. Then, it was clearly admitted by the petitioner that in the fields seasonal work was being done. He was also categorical that in the department he was working in the fields as a beldar. These admissions on the part of the petitioner and the aforesaid seniority lists, knock the very bottom of the case set up by him that he was engaged as a daily paid worker by the respondents. Rather, it appears that he used to do seasonal work in the department and at present is working under the contractor. Had it been that the petitioner was a daily paid worker of the respondents, he ought to have been engaged on the muster rolls. No muster roll in his name has been placed and exhibited on record by the petitioner. This only goes to show that he had never been engaged on the muster roll. Further, the seniority lists (Ex.R-1 and Ex.R-2), nowhere reflect the name of the petitioner as a daily paid worker. Then, it is apt to mention here that a complete ban had been imposed by the State Government for filling up of vacant posts even by engaging daily paid labourers. Reference in this regard can be made to the copy of letter dated 8th July, 1998 as Ex.RW1/B. So, how it lies in the mouth of the petitioner to say that he was appointed or engaged in the year 2008 as a daily paid worker. In view of the admissions made by the petitioner, as discussed above, and also taking into account the aforesaid documentary evidence, it can safely be held that the petitioner has failed to establish on record that he was engaged as a daily paid worker by the respondents.

16. Next, it was claimed by the petitioner that he had worked continuously with the respondents from the year 2008 upto the year 2010, without any breaks. No such record has been seen in the light of the day. Be it recorded here at the risk of repetition that had the services of the petitioner been engaged as a daily paid worker by the respondents, his name ought to have figured in the seniority list maintained by the respondents. But, so is not the case here. Then, if the petitioner was a daily paid worker muster rolls must have been issued in his name. No muster roll has been filed by the petitioner, nor he had called for any such record so as to show that he indeed was a daily paid worker. For proving that the petitioner was a 'workman' and as such entitled for protection under the Act, it was required to be proved on his part that as provided under Section 25-B of the Act, he had continuously worked for a period of 240 days in a calendar year. Having failed to establish on record that he had worked as a daily paid worker with the respondents and in the absence of there being any evidence to the effect that he had continuously worked for a period of 240 days in a calendar year, his submission in this regard is negated. In case titled as Range Forest Officer vs. S.T. Hadimani 2002 SCC (L&S) 367, it has been laid down by the Hon'ble Supreme Court that filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that the workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman.

17. In all fairness, the learned Authorized Representative for the petitioner has placed reliance upon cases titled as Central Bank of India vs. S. Satyam and Ors. 1996 SCC (L&S) 1273; State of Himachal Pradesh and others vs. Bhatag Ram and Anr. Latest HLJ 2007 (HP) 903 and Basanti Devi and others vs. State of Jharkhand and Ors. 2009 (122) FLR 172. I have carefully gone through the aforesaid case law cited by the learned Authorized Representative for the petitioner and I am of the view that for the reasons mentioned hereinabove, the petitioner cannot derive any advantage from what has been decided in these cases.

18. Reliance was also placed upon cases titled as Bhilwara Dugdh Utpadak Sahakari Sangh Limited vs. Vinod Kumar Sharma (Dead) by L.Rs and Ors. 2011 (131) FLR 759 and Chet Ram vs. Presiding Officer, Industrial Tribunal-cum-Labour Court-1, 2010 LLR 1165, where in the question of engagement of the labour from licensed/unlicensed contractors and the effect of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 has been dealt with. Since,

there is no reference received from the appropriate Government under the provisions of the aforesaid Act, this Court is to confine its findings only with regard to alleged illegal termination. Even otherwise, the petitioner has nowhere pleaded nor proved that he had been appointed through a licensed/unlicensed contractor, so that he could be considered to be an employee of the employer directly, instead of that of the contractor. Therefore, the aforesaid case law is also of no help to the petitioner in the case on hand.

19. Reference was also made by the petitioner to the cases titled as Goa M.R.F. Employees' Union vs. ICARUS Foods and Farm and Others, 2015 LLR 974, wherein it has been held that where in discharge of a statutory obligation of maintaining a canteen in any establishment, the principal employer avails the services of a contractor, the contract labour would indeed be the employees of the principal employer. The petitioner has also referred to case titled as Hindalco Industries Ltd. vs. Association of Engineering Workers, 2008 LLR 509, wherein it has been held that though a canteen was run by the contractor but ultimate control and supervision has been by the company, the workmen are in fact workmen of the management. It is nowhere the case of the petitioner that he had been working for a long time continuously without any breaks in service through different contractors from time to time, under the control and supervision of the respondents, so he cannot be considered to be an employee of the principal employer. Then, this matter is also not in dispute in this reference. So, the aforesaid case law is also not applicable to the facts of the present case.

20. In view of the ocular and documentary evidence, as discussed above, it can safely be concluded that the petitioner has not been able to show that he was engaged as a daily paid worker by the respondents. No muster roll was prepared regarding his work, nor his name figured in the seniority list of daily paid workers maintained by the respondents. There is no document on record to show that the petitioner had challenged or objected to the seniority lists, which did not show his name as a daily paid worker. Therefore, the petitioner is not a daily paid worker. But, having worked as a seasonal worker, he is not entitled to any relief as claimed for by him. Hence, issues no.1 and 2 are answered in the negative and are decided against the petitioner, while issue no.6 is answered in the affirmative and is decided in favour of the respondents.

Issues No. 3, 4 and 7 :

21. Taking in to account my findings on issues No. 1, 2 and 6 above, it is held that neither the petitioner has the cause of action nor the *locus standi* to sue. The claim petition is not maintainable in the present form. The petitioner has not approached the Court with clean hands and has suppressed material facts. The claim petition is frivolous and vexatious. It has been instituted by the petitioner with a malafide intention to derive undue advantage(s). These issues are answered in the affirmative and are decided in favour of the respondents.

Issue No. 5 :

22. Not pressed.

Relief :

23. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 31st day of March, 2021.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

LAW DEPARTMENT

NOTICE

Shimla-2, the 6th August, 2021

No. LLR-E(9)-9/2018-Leg.— Whereas, Shri Surinder Singh Pathania, Advocate s/o Late Sh. Chatter Singh Pathania, r/o Vill. Gholi, P.O. Lohara, Tehsil Fatehpur, District Kangra, H.P. has applied for appointment of notary in Sub-Division Fatehpur of District Kangra under rule 4 of the Notaries Rules, 1956.

Therefore, I, the undersigned in exercise of the power conferred *vide* Government Notification No. LLR-A(2)-1/2014-Leg. dated 1st July, 2017, hereby issue notice under rule 6 of the Notaries Rules, 1956, for the information of general public for inviting objections, if any, within a period of seven days from the date of publication of this notice in e-Rajpatra, H.P. against his appointment as a notary in Sub-Division Fatehpur of District Kangra.

Sd/-,
(Competent Authority),
DLR-cum-Deputy Secretary (Law-English).

LAW DEPARTMENT

NOTICE

Shimla-2, the 6th August, 2021

No. LLR-E(9)-3/2021-Leg.—Whereas, Sh. Dharminder Singh Rana, Advocate s/o Sh. Khaminder Singh Rana, r/o Ward No. 2, Nalagarh, Tehsil Nalagarh, District Solan, H.P. has applied for appointment of notary in Sub-Division Nalagarh of District Solan under rule 4 of the Notaries Rules, 1956.

Therefore, I, the undersigned in exercise of the power conferred *vide* Government Notification No. LLR-A (2)-1/2014-Leg. dated 1st July, 2017, hereby issue notice under rule 6 of the Notaries Rules, 1956, for the information of general public for inviting objections, if any, within a period of seven days from the date of publication of this notice in e-Rajpatra, H.P. against his appointment as a notary in Sub-Division Nalagarh of District Solan.

Sd/-,
(Competent Authority),
DLR-cum-Deputy Secretary (Law-English).

**In the Court of Sh. Surender Jaswal, H.A.S., Marriage Officer-cum-Sub-Divisional
Magistrate (Officiating), Kullu, District Kullu (H.P.)**

In the matter of :

1. Aamir Khan s/o Sh. Fateh Din, r/o H. No. 249, Tali Mohali, Surajpur, Panchakula, Haryana.
2. Meghna Sharma d/o Sh. Madan Sharma, r/o House No. 72, Ward No. 1, Ramshila Akhara Bazar, Kullu (H.P.) . . Applicants.

Versus

General Public

Subject.—Proclamation for the registration of marriage under section 5 of Special Marriage Act, 1954.

Aamir Khan and Meghna Sharma have filed an application alongwith affidavits in the court of undersigned under section 11 of Special Marriage Act, 1954 that presently they are unmarried and they intend to solemnize their marriage under section 11 of Special Marriage Act, 1954.

Therefore, the general public is hereby informed through this notice that any person who has any objection regarding this marriage can file the objection personally or in writing before this court on or before 16-08-2021. The objection received after 16-08-2021 will not be entertained and marriage will be registered accordingly.

Issued today on 16-07-2021 under my hand and seal of the court.

Seal.

Sd/-
(SURENDER JASWAL, H.A.S.),
Marriage Officer-cum-Sub-Divisional
Magistrate, (Officiating),
Kullu, District Kullu (H.P.).

ब अदालत श्री बालक राम शर्मा, कार्यकारी दण्डाधिकारी व नायब तहसीलदार एवं सहायक समाहर्ता
द्वितीय श्रेणी सैज, उप-तहसील सैज, जिला कुल्लू, हिमाचल प्रदेश

श्री चिमन लाल पुत्र श्री नोख सिंह, निवासी गांव धारा, डाकघर बनोगी, उप-तहसील सैज, जिला कुल्लू (हि० प्र०)।

बनाम
आम जनता

विषय.—राजस्व रिकार्ड में नाम दर्ज करने बारे।

श्री चिमन लाल पुत्र श्री नोख सिंह, निवासी गांव धारा, डाकघर बनोगी, उप-तहसील सैज, जिला कुल्लू (हि० प्र०) ने एक प्रार्थना-पत्र शपथ-पत्र सहित इस अदालत में पेश किया है कि उसका नाम मोहाल

सुचैहण व कोठी बनोगी में संजय कुमार पुत्र श्री नोख सिंह दर्ज है जोकी गलत है जबकि ग्राम पंचायत सुचैहण के परिवार रजिस्टर भाग-1 में उसका नाम चिमन लाल दर्ज है । अतः इसे दुरुस्त किया जाए।

अतः इस इशतहार द्वारा सर्वसाधारण को सूचित किया जाता है कि यदि किसी को इस बारे कोई एतराज हो तो दिनांक 16-08-2021 को असागतन व वकालतन प्रातः 11.00 बजे हाजिर होकर अपना एतराज पेश कर सकता है निर्धारित अवधि के पश्चात् कोई उजर व एतराज प्राप्त न होने पर प्रार्थना-पत्र स्वीकार किया जाकर राजस्व रिकार्ड में उसका नाम संजीव उर्फ संजय कुमार उर्फ चिमन लाल पुत्र नोख सिंह दर्ज करने के आदेश पारित किए जाएंगे।

आज दिनांक 16-07-2021 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित/—
सहायक समाहर्ता द्वितीय श्रेणी,
सैज, उप-तहसील सैज, जिला कुल्लू (हि0 प्र0)।

ब अदालत श्री बालक राम शर्मा, कार्यकारी दण्डाधिकारी व नायब तहसीलदार एवं सहायक समाहर्ता
द्वितीय श्रेणी सैज, उप-तहसील सैज, जिला कुल्लू, हिमाचल प्रदेश

श्री हेम राज पुत्र श्री जित राम, निवासी गांव मरौड़, डाकघर मझान, उप-तहसील सैज, जिला कुल्लू (हि0 प्र0)।

बनाम

आम जनता

विषय.—पंचायत रिकार्ड में नाम व जन्म तिथि दर्ज करने बारे।

श्री हेम राज पुत्र श्री जित राम, निवासी गांव मरौड़, डाकघर मझान, उप-तहसील सैज, जिला कुल्लू (हि0 प्र0) ने एक प्रार्थना-पत्र शपथ-पत्र सहित इस अदालत में पेश किया है कि मेरी पुत्री का नाम रवीना देवी की जन्म तिथि 28-09-2020 ग्राम पंचायत गाड़ापारली में दर्ज नहीं है।

अतः इस इशतहार द्वारा सर्वसाधारण को सूचित किया जाता है कि यदि किसी को इस बारे कोई एतराज हो तो दिनांक 16-08-2021 को असागतन व वकालतन प्रातः 11.00 बजे हाजिर होकर अपना एतराज पेश कर सकता है निर्धारित अवधि के पश्चात् कोई उजर व एतराज प्राप्त न होने पर प्रार्थना-पत्र स्वीकार किया जाकर ग्राम पंचायत गाड़ापारली में इसका नाम रवीना देवी व जन्म तिथि 28-09-2020 दर्ज करने के आदेश पारित किए जाएंगे।

आज दिनांक 16-07-2021 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित/—
सहायक समाहर्ता द्वितीय श्रेणी,
सैज, उप-तहसील सैज, जिला कुल्लू (हि0 प्र0)।

**ब अदालत श्री बालक राम शर्मा, कार्यकारी दण्डाधिकारी व नायब तहसीलदार एवं सहायक समाहर्ता
द्वितीय श्रेणी सैज, उप-तहसील सैज, जिला कुल्लू, हिमाचल प्रदेश**

श्रीमती हरा दासी पत्नी श्री दोत राम, निवासी गांव करहीला, डाकघर सुचैहण, उप-तहसील सैज, जिला कुल्लू (हि0 प्र0)।

बनाम

आम जनता

विषय.—पंचायत रिकार्ड में नाम दर्ज करने बारे।

श्रीमती हरा दासी पत्नी श्री दोत राम, निवासी गांव करहीला, डाकघर सुचैहण, उप-तहसील सैज, जिला कुल्लू (हि0 प्र0) ने एक प्रार्थना-पत्र शपथ-पत्र सहित इस अदालत में पेश किया है कि उसके पुत्र का नाम अजय कुमार की जन्म तिथि 28-05-2015 ग्राम पंचायत देऊरीधार में दर्ज नहीं है।

अतः इस इशतहार द्वारा सर्वसाधारण को सूचित किया जाता है कि यदि किसी को इस बारे कोई एतराज हो तो दिनांक 22-08-2021 को अदालतन व वकालतन प्रातः 11.00 बजे हाजिर होकर अपना एतराज पेश कर सकता है निर्धारित अवधि के पश्चात् कोई उजर व एतराज प्राप्त न होने पर प्रार्थना-पत्र स्वीकार किया जाकर ग्राम पंचायत देऊरीधार में इसके पुत्र का नाम अजय कुमार व जन्म तिथि 28-05-2015 दर्ज करने के आदेश पारित किए जाएंगे।

आज दिनांक 22-07-2021 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित/—
सहायक समाहर्ता द्वितीय श्रेणी,
सैज, उप-तहसील सैज, जिला कुल्लू (हि0 प्र0)।

**ब अदालत कार्यकारी दण्डाधिकारी प्रथम श्रेणी एवं तहसीलदार, भुन्तर,
जिला कुल्लू (हि0 प्र0)**

केस नं0 : 21-MT/2021

दायर तिथि : 26-03-2021

1. श्री हेम राज पुत्र श्री रोशन लाल, निवासी गांव टिककर, डाकघर कसलादी, तहसील भुन्तर, जिला कुल्लू, हि0 प्र0।

2. श्रीमती पुष्पा देवी पुत्री श्री गुमत राम, निवासी गांव चतराणी, डाकघर धारा, तहसील भुन्तर, जिला कुल्लू, हि0 प्र0।

बनाम

सर्वसाधारण एवं आम जनता

विषय.— प्रार्थना-पत्र जेर धारा 5(4) हि0 प्र0 रजिस्ट्रीकरण नियम, 2004 विवाह पंजीकरण बारे।

उपरोक्त मामला में प्रार्थीगण ने दिनांक 26-03-2021 को इस अदालत में प्रार्थना-पत्र मय शपथ-पत्र पेश किये हैं कि उन्होंने दिनांक 16-04-2017 को शादी कर ली है और तब से दोनों पति-पत्नी के रूप में

रहते चले आ रहे हैं परन्तु प्रार्थीगण ने अपनी शादी का इन्द्राज सम्बन्धित ग्राम पंचायत तलपीणी, तहसील भुन्तर, जिला कुल्लू, हि० प्र० में दर्ज नहीं करवाया है।

अतः सर्वसाधारण व आम जनता को इस इशतहार द्वारा सूचित किया जाता है कि यदि किसी व्यक्ति को उपरोक्त प्रार्थीगण की शादी से सम्बन्धित ग्राम पंचायत के अभिलेख में दर्ज करने बारे एतराज हो तो वह दिनांक 23-08-2021 को सुबह 10.00 बजे या इससे पूर्व असालतन या वकालतन हाजिर अदालत आकर अपना एतराज दर्ज करवा सकता है। इसके उपरान्त कोई भी एतराज समायत न होगा तथा नियमानुसार शादी दर्ज करने के आदेश सम्बन्धित पंचायत को पारित कर दिए जाएंगे।

आज दिनांक 20-07-2021 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी हुआ।

मोहर।

हस्ताक्षरित/—
कार्यकारी दण्डाधिकारी प्रथम श्रेणी एवं तहसीलदार,
भुन्तर, जिला कुल्लू (हि० प्र०)।

**ब अदालत कार्यकारी दण्डाधिकारी प्रथम श्रेणी एवं तहसीलदार, भुन्तर,
जिला कुल्लू (हि० प्र०)**

केस नं० : 20-MT/2021

दायर तिथि : 09-09-2020

1. श्री बुध राम पुत्र श्री दिला राम, निवासी गांव नौरी, डाकघर भ्रैण, तहसील भुन्तर, जिला कुल्लू, हि० प्र०।

2. श्रीमती मीना कुमारी पुत्री श्री धर्म चन्द, निवासी गांव डुंखरा, डाकघर जरी, तहसील भुन्तर, जिला कुल्लू, हि० प्र०।

बनाम

सर्वसाधारण एवं आम जनता

विषय.— प्रार्थना-पत्र जेर धारा 5(4) हि० प्र० रजिस्ट्रीकरण नियम, 2004 विवाह पंजीकरण बारे।

उपरोक्त मामला में प्रार्थीगण ने दिनांक 09-09-2020 को इस अदालत में प्रार्थना-पत्र मय शपथ-पत्र पेश किये हैं कि उन्होंने दिनांक 20-11-2019 को शादी कर ली है और तब से दोनों पति-पत्नी के रूप में रहते चले आ रहे हैं परन्तु प्रार्थीगण ने अपनी शादी का इन्द्राज सम्बन्धित ग्राम पंचायत दनोगी, तहसील भुन्तर, जिला कुल्लू, हि० प्र० में दर्ज नहीं करवाया है।

अतः सर्वसाधारण व आम जनता को इस इशतहार द्वारा सूचित किया जाता है कि यदि किसी व्यक्ति को उपरोक्त प्रार्थीगण की शादी से सम्बन्धित ग्राम पंचायत के अभिलेख में दर्ज करने बारे एतराज हो तो वह दिनांक 23-08-2021 को सुबह 10.00 बजे या इससे पूर्व असालतन या वकालतन हाजिर अदालत आकर अपना एतराज दर्ज करवा सकता है। इसके उपरान्त कोई भी एतराज समायत न होगा तथा नियमानुसार शादी दर्ज करने के आदेश सम्बन्धित पंचायत को पारित कर दिए जाएंगे।

आज दिनांक 20-07-2021 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी हुआ।

मोहर।

हस्ताक्षरित/—
कार्यकारी दण्डाधिकारी प्रथम श्रेणी एवं तहसीलदार,
भुन्तर, जिला कुल्लू (हि० प्र०)।

**ब अदालत कार्यकारी दण्डाधिकारी, प्रथम श्रेणी एवं तहसीलदार, भुन्तर,
जिला कुल्लू (हि0प्र0)**

केस नं० : 20/BT 2021

दायर तिथि : 16-07-2021

श्री चन्दे राम पुत्र श्री वेई राम, गांव व डाकघर मलाणा, तहसील भुन्तर, जिला कुल्लू (हि0 प्र0)।

बनाम

सर्वसाधारण एवं आम जनता

विषय.—प्रार्थना-पत्र अधीन धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

श्री चन्दे राम पुत्र श्री वेई राम, गांव व डाकघर मलाणा, तहसील भुन्तर, जिला कुल्लू (हि0 प्र0) ने इस कार्यालय में प्रार्थना-पत्र मय शपथ-पत्र दिया है कि उसकी पुत्री पार्वती ठाकुर का जन्म दिनांक 15-12-2007 को स्थान गांव व डा0 मलाणा, तहसील भुन्तर, जिला कुल्लू, हि0 प्र0 में हुआ है परन्तु वह अपने पुत्र के जन्म की तिथि का इन्द्राज किसी कारणवश ग्राम पंचायत मलाणा, तहसील भुन्तर, जिला कुल्लू, हि0 प्र0 के अभिलेख में दर्ज न कर सका।

अतः इस इश्तहार हजा द्वारा सर्वसाधारण को सूचित किया जाता है कि यदि किसी व्यक्ति को पार्वती ठाकुर पुत्री श्री चन्दे राम के जन्म तिथि दर्ज करवाने बारे कोई आपत्ति हो तो वह दिनांक 23-08-2021 को सुबह 10.00 बजे या इससे पूर्व असालतन या वकालतन हाजिर अदालत आकर अपना एतराज दर्ज करवा सकता है। इसके उपरान्त कोई भी एतराज समायत न होगा तथा नियमानुसार जन्म तिथि दर्ज करवाने के आदेश सम्बन्धित ग्राम पंचायत को पारित कर दिए जाएंगे।

आज दिनांक 20-07-2021 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी हुआ।

मोहर।

हस्ताक्षरित/—
कार्यकारी दण्डाधिकारी प्रथम श्रेणी एवं तहसीलदार,
भुन्तर, जिला कुल्लू (हि0प्र0)।

**In the Court of Sh. Raman Kumar Sharma (HPAS), Marriage Officer-cum-Sub-Divisional
Magistrate, Chachyot at Gohar, District Mandi (H. P.)**

In the matter of :

1. Sh. Ishwar Dass s/o Sh. Bhav Dev, r/o Village Jayog, P.O. Shalla, Tehsil Chachyot, District Mandi (H.P.).

2. Smt. Yamini Devi d/o Tej Singh, r/o Village Kathla, P.O. Chail Chowk, Tehsil Chachyot, District Mandi (H.P.) . . Applicants.

Versus

General Public

Subject.—Proclamation for the registration of Marriage under section 15 of Special Marriage Act, 1954.

Sh. Ishwar Dass and Smt. Yamini Devi have filed an application on 14-07-2021 alongwith affidavits in the court of undersigned under section 15 of Special Marriage Act, 1954 that they have solemnized their marriage on 26-06-2021 and they are living as husband and wife since then and hence, their marriage may be registered under Special Marriage Act, 1954.

Therefore, the general public is hereby informed through this notice that any person who has any objection regarding this marriage, can file the objection personally or in writing before this court on or before 16-08-2021. The objection received after 16-08-2021 will not be entertained and marriage will be registered accordingly.

Issued today on 14-07-2021 under my hand and seal of the court.

Seal.

Sd/-

*Marriage Officer-cum-Sub-Divisional Magistrate,
Chachyot at Gohar, District Mandi (H.P.).*

In the Court of Sh. Raman Kumar Sharma (HPAS), Marriage Officer-cum-Sub-Divisional Magistrate, Chachyot at Gohar, District Mandi (H. P.)

In the matter of :

1. Sh. Deepak Kumar s/o Sh. Begam Dass, r/o Village Seri, P.O. Moviseri, Tehsil Chachyot, District Mandi (H.P.).

2. Smt. Anita Kumari d/o Luder Singh, r/o Village Kakrai, P.O. Surah, Tehsil Balh, District Mandi (H.P.) . . Applicants.

Versus

General Public

Subject.—Proclamation for the registration of Marriage under section 15 of Special Marriage Act, 1954.

Sh. Deepak Kumar and Smt. Anita Kumari have filed an application on 13-07-2021 alongwith affidavits in the court of undersigned under section 15 of Special Marriage Act, 1954 that they have solemnized their marriage on 04-05-2021 and they are living as husband and wife since then and hence, their marriage may be registered under Special Marriage Act, 1954.

Therefore, the general public is hereby informed through this notice that any person who has any objection regarding this marriage, can file the objection personally or in writing before this court on or before 16-08-2021. The objection received after 16-08-2021 will not be entertained and marriage will be registered accordingly.

Issued today on 13-07-2021 under my hand and seal of the court.

Seal.

Sd/-

*Marriage Officer-cum-Sub-Divisional Magistrate,
Chachyot at Gohar, District Mandi (H.P.).*

**In the Court of Marriage Officer-cum-Sub-Divisional Magistrate, Sadar,
District Mandi (H. P.)**

In the matter of :

1. Punit Gupta s/o Sh. Balibhader Gupta, r/o H. No. 78/5, Palace Colony Mandi, Tehsil Sadar, District Mandi (H.P.).
2. Ishita Gupta d/o Sh. Govind Ram Thakur, V. P.O. Nagwain, Tehsil Aut, District Mandi (H.P.) . . Applicants.

Versus

General Public

Subject.—Application for the registration of marriage under section 15 of Special Marriage Act, 1954.

Punit Gupta s/o Sh. Balibhader Gupta, r/o H. No. 78/5, Palace Colony Mandi, Tehsil Sadar, District Mandi (H.P.) and Ishita Gupta d/o Sh. Govind Ram Thakur, V. P.O. Nagwain, Tehsil Aut, District Mandi (H.P.) (at present wife of Punit Gupta s/o Sh. Balibhader Gupta, r/o H. No. 78/5, Palace Colony Mandi, Tehsil Sadar, District Mandi H.P.) have filed an application alongwith affidavits in the court of undersigned under section 15 of Special Marriage Act, 1954 that they have solemnized their marriage on 19-06-2021 according to Hindu rites and customs at their respective houses Mandi, District Mandi (H.P.) and they are living together as husband and wife since then. Hence, their marriage may be registered under Special Marriage Act, 1954.

Therefore, the general public is hereby informed through this notice that any person who has any objection regarding this marriage, can file the objection personally or in writing before this court on or before 16-08-2021 after that no objection will be entertained and marriage will be registered.

Issued today on 17th day of June, 2021 under my hand and seal of the court.

Seal.

Sd/-
Marriage Officer-cum-Sub-Divisional Magistrate,
Sadar, District Mandi (H.P.).

ब अदालत कार्यकारी दण्डाधिकारी, तहसील औट, जिला मण्डी (हि० प्र०)

मिसल नं० : 21 / 2021

आगामी पेशी : 16-08-2021

श्री इन्द्र प्रकाश पुत्र श्री जय देव शर्मा, निवासी गांव भटवाड़ी, डाकघर कोट खमराधा, तहसील औट, जिला मण्डी (हि० प्र०) वादी ।

बनाम

आम जनता

. प्रतिवादी ।

विषय.—जन्म पंजीकरण जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

श्री इन्द्र प्रकाश पुत्र श्री जय देव शर्मा, निवासी गांव भटवाड़ी, डाकघर कोट खमराधा, तहसील औट, जिला मण्डी (हि0 प्र0) ने इस अदालत में आवेदन—पत्र मय शपथी—पत्र इस आशय से गुजारा है कि उसकी दादी श्रीमती कुब्जी देवी विधवा सूरज की मृत्यु दिनांक 13-06-2011 को हुई है परन्तु अज्ञानतावश आवेदक की दादी कुब्जी देवी की मृत्यु की घटना का पंजीकरण ग्राम पंचायत भटवाड़ी में दर्ज नहीं किया गया। प्रार्थी अब ग्राम पंचायत भटवाड़ी में अपनी दादी की मृत्यु पंजीकरण रजिस्टर में दर्ज करवाना चाहता है।

अतः इस इशतहार द्वारा आम जनता को सूचित किया जाता है कि यदि किसी व्यक्ति को उक्त व्यक्ति की मृत्यु की घटना को पंजीकरण रजिस्टर में दर्ज करने बारा कोई उजर/एतराज हो तो वह असालतन या वकालतन तारीख पेशी 16-08-2021 को सुबह 10.00 बजे हाजिर होकर अपना उजर/एतराज पेश कर सकता है, बसूरत गैरहाजिरी एकतरफा कार्यवाही अमल में लाई जाकर उचित आदेश पारित कर दिये जाएंगे।

आज दिनांक 14-07-2021 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर

हस्ताक्षरित/—
कार्यकारी दण्डाधिकारी,
तहसील औट, जिला मण्डी (हि0 प्र0)।

ब अदालत नायब तहसीलदार एवं सहायक समाहर्ता द्वितीय श्रेणी, तहसील सन्धोल, जिला मण्डी (हि0प्र0)

मिसल नाम दुरुस्ती नम्बर : 08

तारीख दायर : 22-04-2021

तारीख पेशी : 17-08-2021

श्री विनय कुमार भर्मोरिया पुत्र स्व0 श्री रेलू राम, निवासी गांव दयोल, डाकखाना टौरखोला, तहसील सन्धोल, जिला मण्डी (हि0 प्र0) प्रार्थी।

बनाम

आम जनता

फरीकदोयम।

अधीन धारा 37(2) भू-राजस्व अधिनियम, 1954 के तहत आवेदन पत्र।

श्री विनय कुमार भर्मोरिया पुत्र स्व0 श्री रेलू राम, निवासी गांव दयोल, डाकखाना टौरखोला, तहसील सन्धोल, जिला मण्डी (हि0 प्र0) द्वारा प्रस्तुत आवेदन पत्र में उल्लेख किया है कि उसका वास्तविक नाम विनय कुमार भर्मोरिया है जबकि राजस्व अभिलेख मुहाल दयोल व लसराणा में उसका नाम महन्त राम दर्ज है जो कि गलत है इसलिए प्रार्थी ने निवेदन किया है कि राजस्व अभिलेख मुहाल दयोल व लसराणा में दुरुस्ती की जाकर उसका नाम महन्त राम उर्फ विनय कुमार भर्मोरिया दर्ज किया जाए।

अतः इससे पूर्व कि मामला में अधीन धारा 37(2) भू-राजस्व अधिनियम, 1954 के तहत आगामी आवश्यक कार्रवाई अमल में लाई जाए, इस नोटिस द्वारा जन-साधारण को सूचित किया जाता है कि यदि किसी को उपरोक्त मामला में कोई उजर/एतराज हो तो वह इस न्यायालय में दिनांक 17-08-2021 को प्रातः 10.00 बजे असालतन या वकालतन हाजिर आकर अपना उजर/एतराज पेश कर सकता है अन्यथा गैरहाजिरी की सूरत में एकतरफा कार्यवाही अमल में लाई जाएगी एवं प्रार्थी के आवेदन पत्र का नियमानुसार निपटारा कर दिया जाएगा।

आज दिनांक 03 जुलाई, 2021 को हमारे हस्ताक्षर व मोहर अदालत द्वारा जारी किया गया।

मोहर।

हता/—
नायब-तहसीलदार,
एवं सहायक समाहर्ता, द्वितीय श्रेणी,
सन्धोल, जिला मण्डी, हि0 प्र0।

समक्ष मेघना गोस्वामी, तहसीलदार एवम् सहायक समाहर्ता प्रथम श्रेणी, लडभड़ोल,
जिला मण्डी (हि0 प्र0)

तारीख पेशी : 18-08-2021

श्री पृथी चन्द पुत्र श्री झानू पुत्र श्री डैम्बा, निवासी गांव पनीरू, तहसील लडभड़ोल, जिला मण्डी
(हि0 प्र0) प्रार्थी।

बनाम

आम जनता

फरीकदोयम।

श्री पृथी चन्द पुत्र श्री झानू पुत्र श्री डैम्बा, निवासी गांव पनीरू, तहसील लडभड़ोल, जिला मण्डी
(हि0प्र0) ने शपथ पत्र सहित आवेदन किया है कि प्रार्थी का वास्तविक नाम पृथ्वी चन्द है। परन्तु राजस्व
अभिलेख महाल पनीरू में प्रार्थी का नाम पृथी दर्ज हो चुका है। जो कि गलत दर्ज कागजात माल है। अब
प्रार्थी ने अपना नाम पृथी चन्द दुरुस्त दर्ज करने बारे निवेदन किया है।

अतः इस इशतहार के माध्यम से सर्वसाधारण आम जनता को सूचित किया जाता है कि यदि किसी
व्यक्ति को राजस्व अभिलेख महाल पनीरू में पृथी के स्थान पर पृथी चन्द दुरुस्त करने बारा कोई
उजर/एतराज हो तो वह असागतन या वकालतन तारीख पेशी दिनांक 18-08-2021 को प्रातः 10.00 बजे
इस अदालत में हाजिर होकर अपना उजर/एतराज पेश कर सकते हैं। बसूरत गैरहाजिरी एकतरफा कार्यवाही
अमल में लाई जाकर नाम दुरुस्ती दर्ज करने के आदेश पारित कर दिए जाएंगे।

यह इशतहार आज दिनांक 19-07-2021 को मेरे हस्ताक्षर व मोहर सहित अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित/—
सहायक समाहर्ता प्रथम श्रेणी,
लडभड़ोल, जिला मण्डी (हि0 प्र0)।

समक्ष मेघना गोस्वामी, तहसीलदार एवम् सहायक समाहर्ता प्रथम श्रेणी, लडभड़ोल,
जिला मण्डी (हि0 प्र0)

तारीख पेशी : 18-08-2021

श्री बीरबल पुत्र श्री धोबू पुत्र श्री स्वारू, निवासी गांव व डाकघर खदर, तहसील लडभड़ोल, जिला
मण्डी (हि0 प्र0) प्रार्थी।

बनाम

आम जनता

फरीकदोयम।

श्री बीरबल पुत्र श्री धोबू पुत्र श्री स्वारू, निवासी गांव व डाकघर खदर, तहसील लडभडोल, जिला मण्डी (हि0 प्र0) ने शपथ पत्र सहित आवेदन किया है कि प्रार्थी का वास्तविक नाम बीरबल है परन्तु राजस्व अभिलेख महाल खदर में प्रार्थी का नाम बलवीर सिंह दर्ज हो चुका है। जो कि गलत दर्ज कागजात माल है। अब प्रार्थी ने अपना नाम बीरबल दुरुस्त दर्ज करने बारे निवेदन किया है।

अतः इस इश्तहार के माध्यम से सर्वसाधारण आम जनता को सूचित किया जाता है कि यदि किसी व्यक्ति को राजस्व अभिलेख महाल खदर में बलवीर सिंह के स्थान पर बीरबल दुरुस्त करने बारा कोई उजर/एतराज हो तो वह असालतन या वकालतन तारीख पेशी दिनांक 18-08-2021 को प्रातः 10.00 बजे इस अदालत में हाजिर होकर अपना उजर/एतराज पेश कर सकते हैं। बसूरत गैरहाजिरी एकतरफा कार्यवाही अमल में लाई जाकर नाम दुरुस्ती दर्ज करने के आदेश पारित कर दिए जाएंगे।

यह इश्तहार आज दिनांक 19-07-2021 को मेरे हस्ताक्षर व मोहर सहित अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित/—
सहायक समाहर्ता प्रथम श्रेणी,
लडभडोल, जिला मण्डी (हि0 प्र0)।

समक्ष मेघना गोस्वामी, तहसीलदार एवम् सहायक समाहर्ता प्रथम श्रेणी, लडभडोल,
जिला मण्डी (हि0 प्र0)

तारीख पेशी : 18-08-2021

श्री लेख राज सन्ध्याना पुत्र श्री मनी राम, निवासी गांव सांडा, डाकघर उटपुर, तहसील लडभडोल, जिला मण्डी (हि0 प्र0) प्रार्थी।

बनाम

आम जनता

फरीकदोयम।

श्री लेख राज सन्ध्याना पुत्र श्री मनी राम, निवासी गांव सांडा, डाकघर उटपुर, तहसील लडभडोल, जिला मण्डी (हि0 प्र0) ने शपथ पत्र सहित आवेदन किया है कि प्रार्थी का वास्तविक नाम लेख राज सन्ध्याना है। परन्तु राजस्व अभिलेख महाल सांडा में प्रार्थी का नाम लेख राम दर्ज हो चुका है। जो कि गलत दर्ज कागजात माल है। अब प्रार्थी ने अपना नाम लेख राज सन्ध्याना दुरुस्त दर्ज करने बारे निवेदन किया है।

अतः इस इश्तहार के माध्यम से सर्वसाधारण आम जनता को सूचित किया जाता है कि यदि किसी व्यक्ति को राजस्व अभिलेख महाल सांडा में लेख राम के स्थान पर लेख राज सन्ध्याना दुरुस्त करने बारा कोई उजर/एतराज हो तो वह असालतन या वकालतन तारीख पेशी दिनांक 18-08-2021 को प्रातः 10.00 बजे इस अदालत में हाजिर होकर अपना उजर/एतराज पेश कर सकते हैं। बसूरत गैरहाजिरी एकतरफा कार्यवाही अमल में लाई जाकर नाम दुरुस्ती दर्ज करने के आदेश पारित कर दिए जाएंगे।

यह इश्तहार आज दिनांक 13-07-2021 को मेरे हस्ताक्षर व मोहर सहित अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित/—
सहायक समाहर्ता प्रथम श्रेणी,
लडभडोल, जिला मण्डी (हि0 प्र0)।

ब अदालत सहायक समाहर्ता द्वितीय श्रेणी, उप-तहसील मकरीड़ी, जिला मण्डी (हि0 प्र0)

मिसल नं0 : 16

दिनांक मरजुआ : 17-04-2021

पेशी दिनांक : 27-05-2021

मुकद्दमा इन्द्राज : सेहत नामा

चमन लाल पुत्र श्री सन्तोखी, निवासी गांव घरबेड, डाकघर मकरीड़ी, उप-तहसील मकरीड़ी, जिला मण्डी (हि0 प्र0) ... प्रार्थी।

बनाम

आम जनता

... फरीकदोयम।

प्रार्थना-पत्र U/S 35 ता 37 हि0 प्र0 भू-राजस्व अधिनियम, 1954 के अन्तर्गत बाबत नाम दुरुस्ती बारे।

चमन लाल पुत्र श्री सन्तोखी, निवासी गांव घरबेड, डाकघर मकरीड़ी, उप-तहसील मकरीड़ी, जिला मण्डी (हि0 प्र0) ने शपथ-पत्र सहित आवेदन किया है कि प्रार्थी का वास्तविक नाम चमन लाल पुत्र सन्तोखी है जोकि उसके ग्राम पंचायत त्रैम्बली के रिकार्ड, आधार कार्ड, मतदाता पहचान पत्र और राशन कार्ड में भी यही दर्ज है, परन्तु प्रार्थी का नाम राजस्व अभिलेख महाल त्रैम्बली /196 में चमारु पुत्र सन्तोखी दर्ज हो चुका है जोकि गलत दर्ज कागजात माल है। अब प्रार्थी ने अपना नाम चमारु के स्थान पर चमन लाल करने के आदेश चाहे हैं।

अतः इशतहार के माध्यम से सर्वसाधारण को सूचित किया जाता है कि यदि किसी व्यक्ति को राजस्व अभिलेख महाल त्रैम्बली/196 में चमारु के स्थान पर चमारु उपनाम चमन लाल दुरुस्ती करने बारा कोई उजर/एतराज हो तो वह असालतन/वकालतन तारीख पेशी दिनांक 27-08-2021 को प्रातः 10.00 बजे इस अदालत में हाजिर होकर अपना उजर/एतराज पेश कर सकते हैं। बसूरत गैरहाजिरी एकतरफा कार्यवाही अमल में लाई जा करके नाम दुरुस्ती दर्ज करने के आदेश पारित कर दिये जाएंगे।

यह इशतहार आज दिनांक 14-07-2021 को मेरे हस्ताक्षर व मोहर सहित अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित/-
सहायक समाहर्ता द्वितीय श्रेणी,
उप-तहसील मकरीड़ी, जिला मण्डी (हि0 प्र0)।

ब अदालत सहायक समाहर्ता द्वितीय श्रेणी, उप-तहसील मकरीड़ी, जिला मण्डी (हि0 प्र0)

मिसल नं0 : 18

दिनांक मरजुआ : 26-04-2021

पेशी दिनांक : 27-08-2021

मुकद्दमा इन्द्राज : सेहत नामा

श्रीमती गीता देवी पत्नी श्री सुन्दर सिंह, पुत्र स्व0 मगतू, निवासी कुनकर, डाकघर दुब्बल, उप-तहसील मकरीड़ी, जिला मण्डी (हि0 प्र0) ... प्रार्थिया।

बनाम

आम जनता

... फरीकदोयम।

प्रार्थना-पत्र U/S 35 ता 37 हि0 प्र0 भू-राजस्व अधिनियम, 1954 के अन्तर्गत बाबत नाम दुरुस्ती बारे।

श्रीमती गीता देवी पत्नी श्री सुन्दर सिंह, पुत्र स्व० मगतू निवासी कुनकर, डाकघर दुब्बल, उप-तहसील मकरीड़ी, जिला मण्डी (हि० प्र०) ने शपथ-पत्र सहित आवेदन किया है कि प्रार्थिया के पति का वास्तविक नाम सुन्दर सिंह पुत्र मगतू है जोकि उसके ग्राम पंचायत के रिकार्ड, आधार कार्ड, पैन कार्ड, स्कूल प्रमाण पत्र और राशन कार्ड में भी यही दर्ज है, परन्तु प्रार्थिया के पति का नाम राजस्व अभिलेख महाल कुनकर/241 में गोकल राम पुत्र मगतू दर्ज हो चुका है जोकि गलत दर्ज कागजात माल है। अब प्रार्थिया ने अपने पति का नाम गोकल राम के स्थान पर सुन्दर सिंह करने के आदेश चाहे हैं।

अतः इशतहार के माध्यम से सर्वसाधारण को सूचित किया जाता है कि यदि किसी व्यक्ति को राजस्व अभिलेख महाल कुनकर/241 में गोकल राम के स्थान पर गोकल राम उपनाम सुन्दर सिंह दुरुस्ती करने बारा कोई उजर/एतराज हो तो वह असालतन/वकालतन तारीख पेशी दिनांक 27-08-2021 को प्रातः 10.00 बजे इस अदालत में हाजिर होकर अपना उजर/एतराज पेश कर सकते हैं। बसूरत गैरहाजिरी एकतरफा कार्यवाही अमल में लाई जा करके नाम दुरुस्ती दर्ज करने के आदेश पारित कर दिये जाएंगे।

यह इशतहार आज दिनांक 14-07-2021 को मेरे हस्ताक्षर व मोहर सहित अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित/—
सहायक समाहर्ता द्वितीय श्रेणी,
उप-तहसील मकरीड़ी, जिला मण्डी (हि० प्र०)।

**In the Court of Sh. Manjeet Sharma (H.P.A.S), Sub-Divisional Magistrate, Shimla (Urban),
District Shimla, Himachal Pradesh**

Sh. Brij Kishore Kuthiala s/o Sh. Rattan Chand Kuthiala, r/o House No. 743, Sector-12A,
Panchkula-134109, Haryana
.. Applicant.

Versus

General Public

.. Respondent.

Application under section 13(3) of Birth and Death Registration Act, 1969.

Sh. Brij Kishore Kuthiala s/o Sh. Rattan Chand Kuthiala, r/o House No. 743, Sector-12A, Panchkula-134109, Haryana has preferred an application to the undersigned for registration of date of birth himself Sh. Brij Kishore Kuthiala (DOB-23-03-1948) at above address in the record of Municipal Corporation, Shimla.

Therefore through this proclamation, the general public is hereby informed that any person having any objection for entry of date of birth mentioned above, may submit his objection in writing in this court within 30 (Thirty) days from the date of publication of this notice in official Gazette. No objection will be entertained after prescribed period and application will be decided accordingly.

Given under my hand and seal of the Court on this 9th August, 2021.

Seal.

MANJEET SHARMA (HPAS),
Sub-Divisional Magistrate,
Shimla (Urban), District Shimla (H.P.).

नाम परिवर्तन

मैं, नेहा देवी, उम्र 21 वर्ष सुपुत्री श्री उधम सिंह, निवासी गांव बसोलदा, तहसील भटियात, जिला चम्बा (हि0 प्र0) सूचित/घोषित करती हूं कि मेरा नाम सभी शैक्षणिक प्रमाण-पत्र व अन्य दस्तावेजों में नेहा देवी दर्ज है। जबकि मेरा सही नाम नेहा सिंह है। अतः भविष्य में मुझे नेहा सिंह के नाम से जाना जाए और मेरे सभी शैक्षणिक प्रमाण पत्रों और अन्य आवश्यक दस्तावेजों में भी मेरा नाम नेहा सिंह दर्ज किया जाए।

नेहा देवी सुपुत्री श्री उधम सिंह,
निवासी गांव बसोलदा, तहसील भटियात,
जिला चम्बा, हिमाचल प्रदेश।